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In the Supreme Court of the United States

No. 347

OCTOBER TERM, 1970.

VLADISLAV KELEMEN, *et al.*,

Petitioners,

v.

SERBIAN ORTHODOX CHURCH CONGREGATION OF ST. DEMETRIUS OF AKRON,

Respondent.

PETITION FOR WRIT OF CERTIORARI
To the Supreme Court of the State of Ohio.

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SERBIAN ORTHODOX CHURCH CONGREGATION OF ST. DEMETRIUS OF AKRON,

Respondent.

PETITION FOR WRIT OF CERTIORARI To the Supreme Court of the State of Ohio.

Petitioners pray that a Writ of Certiorari issue to review the judgment of the Supreme Court of Ohio entered in the above-entitled case on April 29, 1970.

CITATIONS TO OPINIONS BELOW.

An opinion under date of August 12, 1966 of the Judge of the Court of Common Pleas of Summit County has not been officially reported. It is presented in Appendix A, *infra*, p. 13.

The journal entry of the Court of Common Pleas following the above opinion is printed in Appendix A, *infra*, p. 42.

An opinion under date of August 2, 1967 of the Court of Appeals for the Ninth Judicial District has not been officially reported. It is presented in Appendix A, *infra*, p. 48.

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The judgment resulting from the two opinions referred to immediately above is printed in Appendix A, *infra*, p. 63.

The order by the Supreme Court of Ohio under date of January 17, 1968, overruling the respondent's Motion to Certify the Record of the Court of Appeals and dismissing respondent's appeal as of right from the Court of Appeals are presented in Appendix A, *infra*, p. 66.

The order of the Supreme Court of Ohio under date of February 14, 1968, denying respondent's Motion for Rehearing is printed in Appendix A, *infra*, p. 67.

The order of the Supreme Court of the United States under date of February 24, 1969, remanding the case to the Supreme Court of the State of Ohio, is printed in Appendix A, *infra*, p. 67.

The opinion of the Supreme Court of the State of Ohio under date of March 4, 1970 is printed in Appendix A, *infra*, p. 67.

The order of the Supreme Court of Ohio denying a Motion for Rehearing by Petitioners herein under date of April 29, 1970 is printed in Appendix A, *infra*, p. 76.

JURISDICTION.

The judgment of the Supreme Court of the State of Ohio was entered on March 4, 1970, Appendix A, *infra*, p. 67.

The Supreme Court of the State of Ohio on April 29, 1970 denied petitioners' Motion for Rehearing, Appendix A, *infra*, p. 76.

The jurisdiction of this Court is invoked under 28 U.S.C.A. Sec. 1257(3).

QUESTION PRESENTED.

When title to property of a local church, which local church is connected to an hierarchical body, is vested in a non-profit corporation, the purpose clause of which confines the use of such property to the specific hierarchical order, and a civil court on remand orders the lower court not to consider any judicial pronouncements by the superior church authority, but to determine the case solely upon the corporation laws of the State, the Code of Regulations of the non-profit corporation and only secular documents, thus permitting a majority of members of the corporation under the laws of Ohio to change the religious order, does such order violate the First and Fourteenth Amendments of the Constitution of the United States under the interpretations as made by this Court with regard to religious controversies?

CONSTITUTIONAL PROVISIONS.

The Constitutional provisions which petitioners contend have been violated by the judgment of the Supreme Court of the State of Ohio are the following:

Amendment I of the Constitution of the United States:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; * * *."

Amendment XIV of the Constitution of the United States, Section 1:

> "* * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE.

The St. Demetrius Church of Akron, Ohio was organized by immigrants of Yugoslavia expressly wishing to worship as they had in the old country as a part of the Serbian Orthodox Church.

The Serbian Orthodox Church is episcopal and hierarchical in structure, as opposed to congregational. The spiritual leader is the Patriarch of Belgrade, Yugoslavia, as the Pope is to the Catholic faith in the Vatican in Rome. On June 21, 1919, the local church congregation formed a religious non-profit corporation (See Mutual Exhibit A, Appendix B), the purpose clause of which designated that the real estate acquired provide a place of worship under the jurisdiction and leadership and in compliance with the customs, dogmas, tenets of the Serbian Orthodox Church.

During the years 1920-1921, the Yugoslavia immigrants mounted in number and the mother church in Belgrade, recognizing the need for a Diocese in the United States of America to provide religious leadership for their American counterparts worshiping here, the Diocese was created by the Holy Bishops Assembly, the duly constituted church body. The new Diocese was known as the Serbian Orthodox Diocese of North America and Canada and St. Demetrius of Akron was one of the church-school congregations within this Diocese. The initial Bishop, as was his successor, Dionisije, was appointed by the only duly constituted body, the Holy Bishops Assembly, so that from its inception, pre-incorporation and after incorporating and to the present time, the Church of St. Demetrius has been an integral part of the Serbian Orthodox Church.

During the 1950's, Bishop Dionisije fostered a revolution of his American Diocese parishioners that resulted in

a schism within the church—one faction adhering to the Mother Church in Belgrade, the dissident faction following Dionisije and disavowing and repudiating the directives of Belgrade. The reason advanced for this schismatic conduct was that the mother country, Yugoslavia, was Communist controlled and that as a result the leaders of the Mother Church in Belgrade could not exercise the requisite religious freedom and that this lack of freedom affected and interfered with the American Diocese.

This schism was not limited to the Congregation of St. Demetrius of Akron, Ohio, as illustrated by the list of cases in pending litigation (See Appendix C, p. 128). All across the country churches were divided—brothers, fathers, sons and other families as a whole.

The result of the transgressions of Dionisije in diverting parishioners from the Mother Church, as well as other personal transgressions, brought an investigation, charges, trial and defrockment of this Bishop and his removal as a priest from the Serbian Orthodox Church. The highest ecclesiastical body, the Holy Bishops Assembly, made a determination of schism against all who followed Dionisije (see Defendants' Exhibit DDD, Appendix B, p. 78). A successor Bishop was appointed to replace Dionisije and because of the growth in numbers of worshipers in the United States, three Dioceses, with a Bishop at the head of each, were created to replace the single Diocese, this being done in 1963. Prior to this act, the Dionisije faction, by elections and various pressure tactics, had forced from the property of St Demetrius those members of the Church who continued to adhere to the Mother Church and wrested control of the corporation and the property from them. At this time the Dionisije faction openly disavowed the church hierarchy and those people maintaining allegiance to it. A resolution to this effect was

passed by the schismatic faction of St. Demetrius (see Exhibit 23B, Appendix B, p. 97).

This litigation was instituted on behalf of the adherents to the Mother Church, asking the civil courts to return to them possession and control of the properties that constitute the St. Demetrius Serbian Orthodox Church of Akron, Ohio.

The result of this litigation in the trial court was the restoration of the property rights in those adhering to the Mother Church. The Court of Appeals affirmed this decision. The Supreme Court of Ohio, upon motion of the appellants, denied a Motion to Certify. This case reached the Supreme Court of the United States on a Petition of Writ of Certiorari by the dissident faction. The Supreme Court of the United States remanded the case to the Supreme Court of the State of Ohio for its determination in light of this Court's decision in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440.

The Supreme Court of Ohio, in its opinon rendered March 4, 1970, reversed and remanded this case to the Court of Appeals of the Ninth Judicial District to be tried de novo on the limited issues of corporate law and secular documents only. The Supreme Court of the State of Ohio denied a rehearing and it is from this decision that the petitioners now present to this Court this Petition for a Writ of Certiorari.

It is, therefore, apparent that the Supreme Court of Ohio has, by its decision, made law with respect to the establishment of religion by allowing a majority of an hierarchical body to determine the religion to be practiced in the Church property.

PRESENTATION OF THE FEDERAL QUESTION.

The Supreme Court of the State of Ohio in its opinion rendered March 4, 1970 pursuant to the order of this Court for remand, first denied the petitioners' rights under the Constitutional Amendments I and XIV with this language:

> "The control of the name and property of the Serbian Orthodox Congregation of St. Demetrius of Akron, Ohio must be determined only by reference to the provisions of the Code of Regulations and By-laws of the corporation not for profit, the corporate laws of this State and any other secular instruments not requiring the resolution of religious tenets or doctrine."

The Constitutional issue, for the first time, with respect to the petitioners' Constitutional rights, thus arose and was brought to the attention of the Supreme Court of the State of Ohio upon a motion for rehearing filed February 16, 1970.

It was urged upon the Court in the motion for rehearing that the Court far exceeded the limitations intended by this Court's recent decisions relating to hierarchical churches and denied petitioners their Constitutional rights with respect to the church property.

REASONS FOR GRANTING WRIT.

1. There is great current public interest in the powers and limitations of civil courts with respect to the determination of religious disputes and particularly so with regard to the Serbian Orthodox Church.

In at least six States, comprising Ohio, Indiana, Illinois, Minnesota, Pennsylvania and New Jersey, as well as in Canada, there are one or more cases decided or pending, encompassing some thirteen different law suits, all involving the same schism within the Serbian Orthodox Church (see cases listed in Appendix C, p. 128).

This Court refused to allow the Petition for Certiorari in *Serbian Eastern Orthodox Congregation of St. George, Elizabeth, New Jersey, etc., v. Serbian Eastern Orthodox Congregation of "St. George," Elizabeth, New Jersey (Diocese for Eastern States of America and Canada, et al.)* 397 U.S. 961, which case being identical to ours, resulted in the rights in the property being retained by the adherents to the Mother Church. This Court's decisions in *Mary Elizabeth Blue Hull, supra*, and *Maryland and Virginia Eldership of the Churches of God, et al., v. Church of God at Sharpsburg, Inc., et al.*, 396 U.S. 367, point up the social revolution within religious organizations, resulting in a multitude of law suits involving religious controversies now extant.

It seems important at this point to observe that the New Jersey Court had the benefit of the *Hull* and *Eldership* decisions in resolving its religious controversy case. The Court there properly recognized those documents and decisions made by the ecclesiastical authorities, thus determining that the adherents to the Mother Church were the proper parties to have possession and control of the church property. This Court, when it refused to review that decision, gave to the group that adhered to the hierarchy control of the church property.

Because of the extensive litigation throughout the United States of the question presented here, it seems most appropriate to ask for a pronouncement by this Court to protect the Constitutional rights of the individuals or groups involved in these disputes and to insure uniform administration of justice in the case at bar and the other pending cases.

2. The decision of the Supreme Court of Ohio is contrary to the decisions of this Court interpreting the First and Fourteenth Amendments to the Constitution of the United States.

This Court was silent for many years upon the subject of church pronouncements until the decision in the *Hull* case, which decision clarified and amplified earlier opinions in cases involving religious questions by reaffirming the basic principles announced in the cases of *Watson v. Jones*, 80 (13 Wall.) U. S. 679; *Kreshik v. St. Nicholas Cathedral*, 363 U.S. 190; *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94; and *Gonzales v. Roman Catholic Archbishop of Manila*, 280 U.S. 1.

This Court in its opinion in *Mary Elizabeth Blue Hull* quoted from the *Watson* case, approving the fundamental concept, which we believe to be applicable to the case at bar, which quote appears on p. 446 of said opinion and is as follows:

> "All who unite themselves to such a body (the general church), do so with an implied consent to its 'government' and are bound to submit to it, but it would be a vain consent and would lead to the total subversion of such religious bodies, if anyone aggrieved by one of their decisions could appeal to the secular Courts and have them reversed. It is of the essence of these religious unions and of their right to establish tribunals for the decisions of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for."

This Court then said on p. 447:

> "The logic of this language leaves the civil courts no role in determining ecclesiastical questions in the process of disputes."

The *Watson* case has been consistently followed in Ohio in all cases involving religious disputes, *i.e. Bakos v. Takach, et al.*, 14 O.A. 371; *Russian Orthodox Greek Catholic Church v. Burdikoff*, 117 O. A. 1; *Methodist Episcopal Church of Cincinnati v. Wood*, 5 Ohio 283; and *Harrison v. Hoyle*, 24 O.S. 254.

The concurring opinion of Justices Marshall, Douglas and Brennan in the *Eldership* cases, *supra*, established three accepted methods that any State may follow in determining religious disputes: (1) The Watson rule; (2) The formal title doctrine; and (3) Special statutes.

Insofar as the third approach is concerned, there are no special statutes in Ohio relating to a non-profit religious corporation holding title to property dedicated to a hierarchical church body. The explanatory footnote on p. 370 of the opinion states that Courts may use any of these approaches so long as it will not necessitate considering purely ecclesiastical matters. Review of Exhibits Q1, VVI, QQ1 and DDD (see Appendix B) show clearly actions taken by a proper ecclesiastical authority, which actions should be recognized and given credence by a civil court. Thus this case clearly falls within the *Watson* rule, as amplified by this Court's recent decisions in the *Hull* and *Eldership* cases, *supra*, and should therefore have been decided under this rule, which the Ohio Courts have followed for more than one hundred years. Neither the Common Pleas Court nor the Court of Appeals determined ecclesiastical matters for the reason that the disavowance of the respondents was patent and conclusive.

The Ohio Supreme Court, in adopting the formal title approach, which in and of itself meets the test of this Court, erred in failing to distinguish between congregational and hierarchical bodies, when it ordered the Court of Appeals to make its decision solely under this doctrine,

the result of which will place the church property in the hands of the schismatics, who now constitute a majority of the members of the corporation. The Supreme Court of the State of Ohio, in failing to recognize the judicial pronouncements of the superior bodies of the hierarchy, has deprived hierarchical churches of the protection and enforcement of their ecclesiastical decisions. It should be mentioned at this point that in the *Eldership* cases, there was no mention of a superior church in the purpose clauses in either of these two congregations, a point which Judge Barnes mentioned in his decision.

The Ohio Supreme Court has departed from the fundamental principles adopted and approved by this Court in the cases heretofore cited and failed to apply the well established principles respecting hierarchical church bodies. To permit the State of Ohio, by the decision rendered by its Supreme Court, to remain in a posture that is polarized with that of the State of New Jersey, seems to patently express an unequal protection of the laws guaranteed under the Federal Constitution. Allowing a State Court to rule that a majority of a connectional church may divest or divert property dedicated to the use of such church constitutes the establishment of religion contrary to the First Amendment and amounts to taking property rights without due process of law in contravention of the Fourteenth Amendment.

No better statement depicts and supports petitioners' position than that contained in the *Watson* case on page 679:

> "A pious man building and dedicating his house of worship to the sole and exclusive use of those who believe the doctrine of Holy Trinity and placing it under control of a congregation which at the time holds the same belief, has a right to expect that the law will prevent that property from being used as a

means of support and dissemination of the Unitarian Doctrine and as a place of Unitarian worship. The protection which the law throws around the trust is the same."

CONCLUSION.

For the foregoing reasons, we submit that the decision of the Ohio Supreme Court has failed to accept and apply the principles established by this Court relating to hierarchical churches where it is unequivocal that the respondent has severed its relationship with the hierarchical body and has by its judgment replaced the *Watson* rule by majority rule. The pronouncement by the Ohio Supreme Court, in departing from these fundamental principles, if permitted to stand, will lay the cornerstone for the beginning of the end of hierarchical church bodies in the State of Ohio.

Since the issue here presented is so prevalent in other cases throughout the United States, and therefore of great public interest and importance, we believe that it is of sufficient weight as to merit the attention of this Court. We urge this Court to note probable jurisdiction and to grant this Petition for a Writ of Certiorari.

Respectfully submitted,

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APPENDIX

APPENDIX A.

OPINION AND DECISION OF THE COURT OF COMMON PLEAS OF SUMMIT COUNTY, OHIO.

(August 12, 1966.)

MATZ, J.:

In the petition plaintiff alleges that it is an unincorporated association in existence continuously since 1918 under the name of Serbian Orthodox Church Congregation of St. Demetrius of Akron, Ohio, composed of dues-paying members engaged in common religious worship.

It is then alleged that the defendants are not members in good standing of plaintiff association; that plaintiff, by the use of the name St. Demetrius Church over a period of years, has acquired a property right in said name in Akron and surrounding area; and that the defendants have set themselves up as St. Demetrius Church Parishioners and held religious services as such, and generally assume to be and constituted themselves as St. Demetrius Church, thereby appropriating to its own use the name of the association and have generally operated in the name of St. Demetrius Church; and by reason thereof, the general public has been led into believing it is dealing with an authorized committee of the plaintiff church. The prayer is that the defendants and all others to whom notice of such injunction may come be enjoined in any way from using the name 'St. Demetrius' or 'St. Demetrius Church' or 'St. Demetrius Church Parishioners' in connection with any concerted activities of any nature without the prior approval of the plaintiff.

Undoubtedly, the Courts will protect the name and good will of an association whether religious or otherwise against a person using said name unauthorized.

In the amended answer and cross petition, the defendants allege that they and their associates are, in fact, the

Serbian Orthodox Church Congregation of St. Demetrius of Akron, Ohio, and that the plaintiff is not the Serbian Orthodox Church Congregation of St. Demetrius of Akron, Ohio, but

> "is a schismatic group, unlawfully and wrongfully ignoring and disobeying the orders and directives of said Church and wrongfully and unlawfully using the name of said congregation in this action which they have no capacity or right to prosecute; nor is the common religious worship in which said group is engaged the worship of the Serbian Orthodox Church."

The second paragraph of the amended answer and cross petition reads as follows:

> "The Serbian Orthodox Church, at all times referred to in the petition, was and is an hierarchical church, governed by Bishops and therefore Episcopal, having in order of the hierarchy and hierarchical authority, at its head, in supreme authority, its Patriarch, its Holy Bishops Assembly consisting of all the Bishops of the Church with the Patriarch as its presiding officer, and its Holy Bishops' Synod, elected by the Holy Bishops Assembly, the highest executive body of the Church, also with the Patriarch as its presiding officer, all having their seat in Belgrade, Yugoslavia, with their related councils, tribunals and committees; having, next in order of the hierarchy and subject to the authorities above mentioned, the Dioceses of the Church, being constituent parts of the Church situated in various geographical divisions and territories, each with one of the Bishops of the Church at its head and with its councils, tribunals and committees; and next, in the order of the hierarchy and of hierarchical authority, having the various Church-School Congregations or Church Congregations within the territory of each Diocese, constituting the membership of the Diocese and subject to its authority and the higher authorities of the

Hierarchy, being constituent parts of the Diocese and of the Church, with their respective officers, committees, organs and individual members."

The *crux* of this case is probably stated in the fifth paragraph of the answer and cross petition as follows:

"The Serbian Orthodox Church Congregation of St. Demetrius, Akron, Ohio, this being the official name of the Church-School Congregation situated in Akron as provided in its By-laws, has been an integral part of the Serbian Orthodox Diocese in the United States of North America and Canada from the establishment of that Diocese in 1927 until the creating of three Dioceses in its stead by the Holy Bishops Assembly of the Serbian Orthodox Church in May of 1963, and since then has been a part of the Eastern American and Canadian Diocese, also called the Middle Eastern and Canadian Diocese, of which Bishop Stefan is now Bishop, being that one of the three Dioceses then created instead of said former large Diocese of the United States of North America and Canada, the community of said Serbian Orthodox Congregation of St. Demetrius of Akron, Ohio, being situated within the geographical limits of said Diocese, all as hereinafter alleged."

There is then alleged various paragraphs or articles of the Constitution of the Serbian Eastern Orthodox Church, Constitution of the Diocese, and the Constitution of the St. Demetrius Church. It is further alleged that on June 21, 1919, said Serbian Orthodox Church Congregation of St. Demetrius organized a corporation under the name of the Servian Orthodox Church of Akron, Ohio, for the purpose of holding the real estate of said church, and that all the real estate of the Church was conveyed by its trustees to said corporation. It is then alleged that through its duly constituted body, the Serbian Eastern Orthodox Church set aside the original diocese covering the United

States and Canada and in its place established three new dioceses.

Without further referring to the pleadings of the defendants, it is suffice to say that the issue joined by these pleadings is whether or not the plaintiffs and their associates constitute the St. Demetrius Church or whether the defendants and their associates constitute such Church. That there is a schism of the church is quite apparent from the evidence. The plaintiffs and their associates claim that plaintiff church is an integral part of the original diocese in the United States of North America and Canada, and that the defendants and their associates are the schismatic group. The defendants, on the other hand, claim that the Serbian Eastern Orthodox Church with its see in Belgrade, Yugoslavia, is the head of the Church and that they and their associates constitute the true Church belonging to the hierarchy with its see in Belgrade.

In 1957, Time, Inc. published *The World's Great Religions*. Commencing on page 245 is a brief history of the Eastern Orthodox Churches.

> "The Orthodox churches began in the Holy Land before there were any Christians in Rome. The New Testament was first written in Greek (the original language of the Orthodoxy) and most of the early church councils were Orthodox in character. Like Roman Catholicism, Orthodoxy, (from the Greek 'orthos' and 'doxa,' "true belief") considers that it was founded directly by Jesus. For Christianity's first thousand years the two together comprised the One, Holy, Catholic and Apostolic Church. But politico-religious cracks in the unity appeared early. For a time the tides ran eastward. After Constantine shifted the Roman Empire's throne to Constantinople in 330 A.D., the two great centers of Christianity—Rome headed by its Pope and Constantinople headed by

its Patriarch—were competing for converts, dioceses and power.

Rome never surrendered its claim to primacy and after Islam conquered much Orthodox territory, the Papacy felt strong enough to try to enforce these claims. The climactic effort came in 1054 after the Patriarch of Constantinople had warned South Italy's bishops, over whom he claimed jurisdiction, against what he considered Roman errors in doctrine and discipline, including clerical celibacy and the use of unleavened bread for Communion. Most of all, he objected to Rome's adding the words 'and the Son' to the phrase in the Nicene Creed: 'in the Holy Ghost * * * who proceedeth from the Father.' Pope Leo IX replied that Rome must remain supreme 'over the Churches of God throughout the world,' and sent legates to Constantinople who, on July 16, 1054, slapped on the altar of Haghia Sophia Church a bull excommunicating the Patriarch and all his adherents. The Patriarch in turn excommunicated the Pope. Thus began the Great Schism between two Catholic churches. The shameful sack of Christian Constantinople by the Crusaders in 1204 made reconcilation unthinkable. Today Orthodoxy considers Rome heretical; Rome considers Orthodoxy schismatic.

The Orthodox Church historically has been a tool of government. During the centuries after the fall of Constantinople in 1453 when the Ottoman Empire ruled most of Orthodoxy's area, the Turks dealt with their Christian subjects through Orthodox prelates, who combining temporal and spiritual leadership, had to mix politics with religion. In Russia, which got its alphabet along with its religion from Orthodox missions, the czars long dominated Orthodoxy. Peter the Great even abolished the Moscow patriarchate to make the czar head of the church.

After the Russian empire ended, the Communists persecuted the Russian church. Because of its continued hold on the masses, the Kremlin allowed

a new Moscow Patriarch to be chosen in 1943. Since World War II the Russian church has again been an arm of the Soviet state, which permits the clergy to flourish on fees and even to print Bibles in Russian, some of them for export. The Russion Orthodox Church claims 50 million adherents, served by 35,000 priests in 20,000 parishes.

Eastern Orthodoxy is now a loose federation including the four historic patriarchates—Constantinople, Jerusalem, Antioch, Alexandria—and the self-governing Orthodox churches of Russia, Yugoslavia, Romania, Greece, Bulgaria, Poland, Georgia, Albania, Cyprus, Sinai, Finland, Estonia, Latvia and Czechoslovakia. The U. S. branches of most of these are also self-governing, but observe the tradition that the Patriarch of Constantinople (the city's old name is still used) has primacy; they look to him for spiritual guidance. Both church doctrine and practice are nearly identical everywhere, though the ritual's language may vary with the church's national origin.

Three of the patriarchates—Jerusalem, Antioch and Alexandria—are now little more than relics. Moscow has been trying to subordinate Constantinople, and a conflict now rages within Orthodoxy between those who oppose and those who accept Communist control of their church."

"As the Serbians immigrated to the Western Hemisphere, the immigrants established churches, orthodox in character, and maintained their Serbian customs and traditions. They were self-governing bodies, but were gathered into a loose federation as far back as 1905, when the Archimandrite Sebastian Dabovitch established his headquarters in Chicago as the administrator of the Servian Orthodox Church in North America, under the jurisdiction of the Russian archbishop of New York City."

(*The New Schaff-Herzog Encyclopedia of Religious Knowledge*, Vol. X, p. 374.)

The Serbs in Akron and vicinity, about the year 1918, founded a Serbian church known as the Serbian Orthodox Church Congregation of Akron, Ohio. On June 21, 1919, the congregation caused a corporation to be founded under the name of Serbian Orthodox Church of Akron, Ohio, the purpose being expressed in the articles as follows (Mutual Exhibit A):

> "for the purpose of providing a place of worship for its members and conducting the same under suitable religious leadership *according to the rules, regulations and customs of the Servian Orthodox Church;* for promoting the cause of the Christian religion; for receiving, holding and disbersing gifts, bequests and funds from any source; *for owning and maintaining suitable real estate and erecting and maintaining thereon suitable buildings,* and also for maintaining a cemetery and for doing any and all things incident to the above." (Emphasis supplied.)

All real estate of the church was conveyed to said corporation.

Along about this time, a club house was built on this premises where church services were held until about the year 1931 when the present church building was built on the premises held by said corporation.

Shortly after World War I, apparently as a result of the Communist influence in Russia, a movement was started to transfer these Serbian churches from the Russian jurisdiction to the Serbian Eastern Orthodox Church. A priest by the name of Mardarij Uskokovic was commissioned to organize the Serbian churches in North America into a Serbian Eastern Orthodox Diocese.

At a meeting which was called by this priest on May 29, 1927, at Libertyville, Illinois, the diocese was organized as a corporation and a Constitution adopted. Apparently at that time there was complete unity of agree-

ment between the newly organized diocese and the Serbian Eastern Orthodox Hierarchy. The Constitution was approved by the Holy Bishops Assembly and the Holy Synod in Belgrade.

By the Constitution, the American and Canadian Diocese formally dropped its Russian affiliation and became a part of the Serbian Patriarchy at Belgrade. Said priest had therefore been appointed Bishop of the newly created diocese by the Holy Bishops Assembly and by King Alexander by instrument dated April 25, 1926, adopting the name of Bishop Mardary.

The Articles of this corporation were permitted to lapse and the diocese was reincorporated under the laws of the State of Illinois on May 15, 1935, adopting the name of Serbian Eastern Orthodox Diocese for the United States of America and Canada.

In 1939, one Dionisije was appointed as Bishop of the Diocese, which was confirmed by King Peter on January 18, 1940.

The Constitution of the diocese as published by the Diocesan Administration of American-Canada in 1939 was introduced in evidence as Defendant's Exhibit TT. Articles 1, 2, 3, & 4 of the Constitution provide as follows:

> "1. The Serbian Orthodox Diocese in the Northern States of America and Canada is *considered ecclesiastically-judicially as an organic part of the Serbian Patriarchate in the Kingdom of Yugoslavia and enjoys all the benefits which originate therefrom.*
>
> "2. All statutes and rules which regulate the ecclesiastical-canonical authority and position of the Serbian Orthodox Church in the Kingdom of Yugoslavia are also compulsory for the Serbian Orthodox Diocese in the United States of North America and Canada, with the exception of specific cases which

must be formulated with regard to local circumstances in accordance with ecclesiastical and judicial principles.

"3. The jurisdiction of the Serbian Orthodox Diocese in the United States of America and Canada with its Diocesan See in Chicago, includes the entire political territory of the United States of America and Canada, which as such by its geographical location *enjoys full administrative freedom and accordingly, it can independently regulate and rule the activities of its church, school and other diocesan institutions and all funds and beneficiencies, through its organs,* but in accordance with the laws of this constitution and in agreement with the laws of the United States of America and Canada.

"4. The Serbian Orthodox Diocese in the United States of America and Canada is comprised of Serbian Orthodox Church-school Congregations-Parishes, churches, monasteries, archpresbyterates, established within the territory of the above mentioned states and which fall under the spiritual, executive, ecclesiastical-judicial and controlling authority of the diocesan organs (Bishop and Diocesan Council). Therefore, every Serbian Orthodox Church-school Congregation, church, monastery, and archpresbyterate already existing or which shall be established in the above mentioned territories must be in ecclesiastical-canonical bond with this Diocese and recognize its authority and power." (Emphasis supplied.)

Article 9 provides as follows:

"9. The Bishop of the Serbian Orthodox Diocese in the United States of America and Canada is appointed by the Holy Assembly of Bishops of the Serbian Patriarchate."

Article 10 sets forth the duties of the Bishop and provides in part as follows:

"h) to execute all canonical orders of the Holy Assembly of Bishops;

"l) to decide questions of degrees in relationships and to, within the canonical limitations and the decisions of the Holy Bishop's Assembly, render dispensations to related persons to wed;

"p) to submit to the Holy Bishop's Assembly of the Serbian Patriarchate an annual report of his archipastoral activities;"

Article 12 reads as follows:

"The Diocesan Bishop in the United States of America and Canada is obliged to recognize as the head of the Serbian Patriarchate, the Archbishop of Ipek, Metropolitan of Belgrade-Karlovac and Serbian Patriarch, whom he mentions in all services. He shall not make any changes or innovations in the established order and work of the church without prior agreement with him.

"Accordingly, the Diocesan Bishop shall submit to the Serbian Patriarch for review, all regulations which may be issued by any diocesan authority, which shall if they touch upon the sphere of internal church administration, be subject to the approval of the Holy Pontifical Synod, as the highest executive church authority.

"Should the Diocesan Bishop find by his own assurance, that decisions rendered by any church authority or organs are contrary to the teachings of the Holy Church, her regulations and canons, or to the vital interests of the church, he shall halt the execution of such decision and submit the matter for rediscussion and re-decision. If he again is not in accordance with the re-decision as reconsidered, he shall submit the case for final decision to a higher authority and if necessary, to the Holy Pontifical Synod."

Article 13 provides as follows:

"13. In the event of illness or absence, the Diocesan Bishop assigns his own substitute and designates his authority. When the seat of the Dioceese Bishop is vacated, the administration of the widowed diocese is upheld in all her spiritual and administrative matters by the Ecclesiastical Court and the Diocesan Council until the appointment of an administrator, which appointment is made by the Serbian Patriarch with the Holy Pontifical Synod."

Article 15 provides as follows:

"The Diocesan Assembly is the main legislative and controlling body in the Diocese and represents *the entire Orthodox Serbs in the United States of America and Canada.*"

Article 23 provides as follows:

"The Diocesan Assembly upon being duly constituted, performs the following:

* * *

(8) decides on changes and amendments to the Constitution with the approval of the Holy Bishops Assembly of the Serbian Patriarchate."

Article 68 provides as follows:

"Each Church-School Congregation is considered an *integral part of the Serbian Orthodox Diocese in the Northern United States of America and Canada* and as such is subject to all the statutes of this Constitution, church canons, and other regulations, rules and orders of the Diocesan authorities headed by the Diocesan Bishop."

Plaintiff's Exhibit 20-A is the "Constitution and By-Laws of the Serbian Orthodox Church School Congregation of Akron, Ohio, Founded 1918," which was adopted December 28, 1924 by the congregation. Articles 1 and 2 of the Constitution read as follows:

"1. According to the wishes of the majority of Serbs in Akron, a Serbian Church Congregation is hereby founded under the name Serbian Orthodox Church School Congregation in Akron, Ohio. The main seat of this Congregation is Akron, Ohio."

"2. Aim—The aim of the Serbian Orthodox Church School Congregation of Akron is to morally and instructively educate its members and the Serbian youth the Serbian faith; to spread and foster Orthodoxy among the Serbian people in this colony and its environs; to maintain the Serbian primary school and to do all that is of value and needed for our people morally and spiritually."

Article 40 reads as follows:

"The Serbian Church School Congregation in Akron is a *part of the Serbian Orthodox Patriarchate and of the Serbian Orthodox Diocese in America.* The congregation may independently function only in the matters relative to the material holdings (properties) of the congregation."

Plaintiff's Exhibit 13 is apparently a later edition of the By-laws of the Serbian Orthodox Church School Congregation of St. Demetrius, Akron, Ohio, and Article 1 reads as follows:

"The name of the Serbian Church School Congregation of Akron is: Serbian Orthodox Church Congregation of St. Demetrius of Akron, Ohio.

"The seat of the Congregation is in the city of Akron, State of Ohio, United States of America. The Congregation is an *integral part of the Serbian Orthodox Diocese of the United States and Canada.* In accordance with Articles 4 and 68 of the Diocesan Constitution, the Congregation submits itself to the regulations of the Diocese and directives of the Diocesan authorities. The official language of the church school congregation is American and Serbian."

Defendant's Exhibit L is the Constitution of the Serbian Orthodox Church, Second Edition of the Holy Synod of Bishops, as revised in 1957. Article 1 provides as follows:

> "The Serbian Orthodox Church is one, undivided, and autocephalous. The Church confesses publicly its religious teachings, performs publicly its religious services, and governs and regulates independently all its religious affairs.
>
> "Serbian Orthodox Church maintains dogmatic and canonical unity with all other Orthodox Churches."

Article 2 provides:

> "The Serbian Orthodox Church has a rank of Patriarchate."

Article 5 provides:

> "The legal persons in the Serbian Orthodox Church are these: Patriarchate, dioceses, church congregations, monasteries, foundations, independent institutions or such funds, and according to the designation, individual temples."

Article 8 provides:

> "The order of the Serbian Orthodox Church is ecclesiastical-hierarchical and ecclesiastical administrative.
>
> "Ecclesiastical authority, spiritual, church-disciplinal and church-judicial, in accordance with the canons and the order of the Serbian Orthodox Church belongs to the hierarchy solely. That authority the hierarchy exercises through its hierarchical representatives and organs.
>
> "The Pontifical authority with the clergy and the laity through its administrative representatives and organs orders and manages matters pertaining to the properties, bequests, (foundations), funds as well as to other matters foreseen by this Constitution.

"Property right interests of the Church before the civil authorities and before the persons are represented by the ecclesiastical organs which are designated by this Constitution."

Article 10:

"In the Serbian Orthodox Church there are the church-hierarchical and administrative authorities, bodies and organs:

1. Patriarch, Holy Assembly of Bishops and Holy Synod of Bishops, the Supreme Ecclesiastical Court, Patriarchal Council and Patriarchal Executive Board;

2. Diocesan Bishop, Diocesan Ecclesiastical Court, Diocesan Council and Diocesan Executive Board;

3. Bishop's District Deputy;

4. Pastor of the Parish;

5. Church-congregational Council and Church congregational Executive Board;

6. Abbot and the Monastery Brotherhood."

Article 12:

"The Serbian Orthodox Church is episcopal. Its principal administrative division is into dioceses, both in regard to church-hierarchical and church-administrative aspect."

Article 13:

"At the head of the Serbian Orthodox Church is the Serbian Patriarch, as its supreme head. The title of the Patriarch is: The Archbishop of Pech, Metropolitan of Belgrad and Karlovci and the Serbian Patriarch.

"At the head of each Diocese there is the Diocesan Bishop as its immediate head. He is, according to the church canonical regulations, the chief representative and leader of all church-spiritual life and church order in the diocese and he directs the diocese assisted by his clergy and people."

Article 14 provides:

"These are the Dioceses in the Serbian Orthodox Church:"

and then sets forth 24 dioceses, all within the territorial limits of Yugoslavia.

Article 15:

"Besides the Dioceses enumerated in the previous article, in the matter spiritual and hierarchical, to the Serbian Orthodox Church also belong these dioceses which are abroad:

"1. The Serbian Orthodox Church in the United States of America and Canada, with its see in Chicago or in the Monastery of St. Sava, in Libertyville, Illinois;"

(and setting forth five other dioceses)

Article 16:

"The decisions concerning the creation, name, abolition, districting and the sees of the Dioceses, and (concerning) the creation and abolition of the positions of the Suffragan Bishops are rendered by the Holy Assembly of Bishops *in accord with the Patriarchal Council.*"

Article 17:

"A Diocese, in the church-administration sense, is comprised of Diocesan Districts, church congregations, parishes and monasteries."

Article 18:

"The Diocesan District is comprised of a fixed number of church congregations and parishes under the supervision of a Bishop's District Deputy."

Article 20:

"A church congregation is comprised of adherents of the Serbian Orthodox Church with a priest on a

specified territory, which may include one or more localities and having as its aim the caring of the needs for the church.

"The decisions about founding of a church congregation is made by the Diocesan Bishop in agreement with the Ecclesiastical Church and the Diocesan Executive Committee, of which he informs the Holy Synod of Bishops and the Patriarchal Executive Committee."

Arficle 69:

"The Holy Assembly of Bishops, whose function is defined in Article 57 of this Constitution:

* * * * *

18. regulates and keeps an official list of candidates for the rank of bishop, and elects from among these worthy persons for diocesan and vicar bishops;

* * * * *

"27. Adjudges:

(A) In first and in final instances:

(a) disagreements between Bishops and the Holy Synod, and between the Bishops and the Patriarch;

(b) canonical offenses of the Patriarch;

(B) In the second and final instance:

All matters which the Holy Synod of Bishops judged in the first instance;"

In Article 70, which proclaims the jurisdiction of the Holy Synod of Bishops, under Division 35,

"35. Judges:

(A) In the first instance:

(a) discord among the bishops;

(b) canonical offenses of a bishop;"

Article 81, et seq., describes and sets forth the composition and duties and jurisdiction of the Patriarchal Council.

Article 104:

"For a Diocesan and Suffragan Bishop can be elected that person:

"(a) who fulfills all canonical conditions foreseen for the rank of a Bishop in the Orthodox Church;

"(b) who has regularly graduated from an Orthodox Spiritual Academy of an Orthodox Theological Faculty (Graduate School of Theology);

"(c) who is a citizen of Yugoslavia; this condition does not apply for Bishops of Serbian Orthodox Dioceses abroad;

"(d) who by his zealous church service, and by his exemplary life and dedicated work for the good of the Church and people has acquired general respect and who has evidenced the ability for the position of a Bishop."

Article 111:

"The Holy Assembly of Bishops may remove the Diocesan Bishop only by a canonical verdict, or release him upon proof of incapacity or by establishing a proof of one of the conditions foreseen in Article 194, as well as upon the ground of a justified application for pension."

The Holy Episcopal of the Serbian Orthodox Church in Belgrade, purporting to act on the request of the Serbian National Assembly of the diocese and a request of Bishop Dionisije for the appointment of more bishops to handle the expanding work of this diocese, created three new dioceses in the place of the Serbian Orthodox Diocese of the United States of North America and Canada

(1) The Middle America Diocese with Bishop Dionisije as its head;

(2) a Western Diocese and

(3) The Eastern American-Canadian Diocese with its See at Detroit.

On the same day, May 10, 1963, said Council suspended Bishop Dionisije from priestly functions and directed him to relinquish the office of Bishop of the Diocese to a newly appointed administrator.

The territory of the Eastern Diocese included the church at Akron, and on May 17, 1963, one Bishop Stefan was appointed Bishop of the Eastern American-Canadian Diocese.

Charges were brought by the Holy Synod against Bishop Dionisije. The acts for which he was indicted by the Holy Synod are as follows:

"For breaking his Episcopal oath and for refusing to submit to the decisions of the highest Church authorities—the Holy Episcopal Council and Synod of the Serbian Orthodox Church;

"For his refusal to participate orally and directly in an investigation before the Investigating Committee of the Holy Episcopal Synod, concerning the charges submitted against him;

"For officiating in Church ceremonies and for performing the duties of diocesan bishop after having been indicted and suspended from the performance of Church ceremonies, and relieved of the duties of diocesan bishop;

"For accepting clerics who had no canonical release, as well as persons who were under suspension from the performance of Church ceremonies, and for entrusting them with parochial duties;

"For committing wrong-doings of a material nature and for conducting himself in a manner unbecoming priestly rank and position;

"For ordaining and bestowing ecclesiastical ranks of honor on such persons who, according to the canons do not possess the necessary qualifications for ordination; and

"For proclaiming the Serbian Orthodox Diocese of America and Canada fully autonomous and separating it from the mother, Serbian Orthodox Church, at the so-called 'Church National Assembly,' held November 13th and 14th, 1963.

"For these offenses, the prosecutor for the Serbian Orthodox Church asked that Bishop Dionisije Milivojevich be divested of both his episcopal and monastic ranks."

On the 15th day of March, 1964, the Holy Episcopal Council of the Serbian Orthodox Church pronounced judgment finding him guilty of the acts charged and defrocking him as a Bishop.

Following the decision of the Holy Council of Bishops establishing the three new diocese, the Church National Assembly of the diocese held a meeting in August in which a resolution was adopted declaring the division of the diocese into three diocese unlawful and unconstitutional and refused to recognize the suspension of Bishop Dionisije. On September 3, 1963, the Holy Bishops Synod of Belgrade declared the Church National Assembly held in August was unlawful and its resolutions and acts invalid.

At a meeting of the Church National Assembly held November 12, 13 and 14, 1963, amendments to the Constitution of the original diocese were adopted which, in substance, declared its autonomy and its freedom of all control of the patriarch in Belgrade.

On July 7, 1963, the plaintiff congregation adopted a resolution (Defendant's Exhibit 23-B) which reads as follows:

"1. The membership considers that the Church-

canonical ties between Serbian Orthodox Church in America and Canada and the Serbian patriarchate in Belgrade shall and must be maintained in order to secure dogmatic and canonical unity and to maintain, for the future the only, indivisible and autocephalous Serbian Orthodox Church (Article 1 of the Constitution of the Serbian Church).

"2. The membership furthermore believes that, in the spirit of Article 13 of the Constitution of the Serbian Orthodox Church and of the Article 3 of the Constitution of the Serbian Orthodox Diocese for the United States of America and Canada, the Serbian Orthodox Diocese in America and Canada must enjoy full administrative freedom in the future, in order to be able to govern its affairs independently and by itself.

"3. The membership considers that, the political structural of Yugoslavia with the Communistic system of Josip Broz-Teto makes impossible free and independent work of the Serbian Church in that country and forces all Church ecclesiastical and administrative authority to an unconditional submissiveness and to unvoluntary cooperation with the godless Communism.

"4. In connection with this the membership believes that the last decisions of the Holy Synod and the Holy Assembly of the bishops relative to the division of the Serbian Orthodox Diocese in America and Canada and to the suspension of the Bishop Dionisije of Politically inspired. This seems to be more evident because of the fact that the decision relative to the division of the Diocese was decreed at the same time when the head of the Serbian Church in America, His Grace Bishop Dionisija was legally deprived any opportunity to represent the Serbian people in America and Canada who he represents for the past 23 years.

"5. The political background of these decisions

from Belgrade were specifically emphasized by the factor that the Very Rev. Stevan Lastavica was selected to be a new Bishop; a man totally completely unknown to the Serbian people in America and Canada; a man with no merit for the Serbian Church in this great lands and a man whose past does not allow such high up ranking.

"6. In a clear difference of opinion and in many groupings which took place after this important decision of our Holy Fathers from Belgrade were taken our membership foresees a very serious danger for our Holy Church in America and Canada and is afraid that the final resolves of these unjustified decisions may be very unpleasant for the future life and work of our church. In regard to this we hereby issue an appeal to all reasonable Serbs, both priest and laymen, to always consider our example in Akron and to gain wisdom from our experience.

"7. Finally, the membership considers that the case of his Grace Bishop Dionisija should and must be considered the way he, Bishop Dionisija, has publically proposed.

"The way by which this case was announced in the American community clearly demonstrates the political background of that decision and, judged by our ideal of freedom, represents a political liquidation equalling a political crime.

"As long as the case of His Grace Bishop Dionisija is not justly resolved the membership of the Church School congregation of the St. Demetrius Church in Akron consider, in regard to Article 5 of the constitution of the Serbian Orthodox Diocese of the United States of America and Canada, the Diocesan counsel (Plenum) as the only legal authority and declare itself hereby to accept and carry out the decision of that counsel."

Shortly after the forming of the new diocese, the President of plaintiff congregation sent several form

letters, apparently to applicants for membership in the church, one of which is Defendant's Exhibit 3-i and which reads as follows:

> "Your application for membership in the St. Demetrius Church Congregation has not been approved by the Executive Board.
>
> "Evidence has been submitted to the Board that you have signed serious and unfounded charges against the Congregation and the Executive Board.
>
> "It has also come to our attention that you are desirous of removing this Church from American Jurisdiction and placing it directly under the jurisdiction of Yugoslavian authorities.
>
> "We, who are striving to support this Church and to raise our children in the Faith of their Fathers, consider these views as being detrimental to our Church and the Congregation.
>
> "If your name has been falsely used on the document expressing the above charges, please indicate this by a letter to the Secretary of the Congregation, Mr. V. Jovich.
>
> Albert Dan Davis,
> President."

The letter to the choir and all the other evidence in the case indicates that plaintiff and those in sympathy with them are intolerant with the members professing adherence to the Mother Church as against adherence to the church headed by Dionisije.

Under this statement of facts, the Court is required to decide which of the two contending parties is the true church. Probably the leading case on that subject is the case of *Watson vs. Jones*, 80 U.S. 679, 20 L. ed. 666 which involves a schism in the Presbyterian Church. On page 674, the Court divides the churches on this subject as follows:

"The questions which have come before the civil courts concerning the rights to property held by ecclesiastical bodies, may, so far as we have been able to examine them, be profitably classified under three general heads, which of course do not include cases governed by considerations applicable to a church established and supported by law as the religion of the state.

"1. The first of these is when the property which is the subject of controversy has been, by the deed or will of the donor, or other instrument by which the property is held, by the express terms of the instrument devoted to the teaching, support or spread of some specific form of religious doctrine or belief.

"2. The second is when the property is held by a religious congregation which, by the nature of its organization, is strictly independent of other ecclesiastical associations, and so far as church government is concerned, owes no fealty or obligation to any higher authority.

"3. The third is where the religious congregation or ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete in some supreme judicatory over the whole membership of that general organization."

And on page 676 as follows:

"But the third of these classes of cases is the one which is oftenest found in the courts, and which, with reference to the number and difficulty of the questions involved, and to other considerations, is every way the most important.

"It is the case of property acquired in any of the usual modes for the general use of a religious congregation which is itself part of a large and general organization of some religious denomination, with

which it is more or less intimately connected by religious views and ecclesiastical government.

"The case before us is one of this class, growing out of a schism which has divided the congregation and its officers, and the presbytery and synod, and which appeals to the courts to determine the right to the use of the property so acquired. Here is no case of property devoted forever by the instrument which conveyed it, or by any specific declaration of its owner, to the support of any special religious dogmas, or any peculiar form of worship, but of property purchased for the use of a religious congregation, and *so long as any existing religious congregation can be ascertained to be that congregation, or its regular and legitimate successor, it is entitled to the use of the property.* In the case of an independent congregation we have pointed out how this identity, or succession, is to be ascertained, but in cases of this character we are bound to look at the fact that the local congregation is itself but a member of a much larger and more important religious organization, and is under its government and control, and is bound by its orders and judgments. There are in the Presbyterian system of ecclesiastical government, in regular succession, the Presbytery over the session or local church, the Synod over the Presbytery, and the general assembly over all. These are called, in the language of the church organs, 'judicatories', and they entertain appeals from the decisions of those below, and prescribe corrective measures in other cases."

There is a long annotation on the subject in 24 LRA (N. S.), and on page 696, the author of the annotation discusses the question of the identity of the organization which is the successor of the schismatic organization and we quote here as follows:

"While the opinion in *Watson v. Jones* in terms makes the question of identity the criterion in cases

of the second class, and the action or decision of the supreme church judicatory the criterion in cases of the third class, it is apparent that, to the extent that the principles laid down in this case are accepted and followed, the question for the civil courts in the determination of property rights, whether the society is of the second or third class, is fundamentally and ultimately one of identity, not of individuals, but of organizations. In other words, when, as is almost invariably true of the cases cited in this note, a controversy over property rights arises out of a schism or division in a local society, whether of the second or of the third class, the civil court, for the purposes of the property right involved, and for that purpose only, is to ascertain *which of the rival factions is the true representative and successor or continuation of that local society as it existed prior to the schism or division. In general that question is to be determined by ascertaining which of the two factions adheres to or is sanctioned by the governing body of the society.* The result of the application of that criterion will, of course, depend very largely on the question whether the society belongs to the second or third class, since, as already stated, the governing body of a society of the second class is ordinarily the majority of the society itself, so that the application of the criterion in this class of cases calls for adherence to or sanction by the majority of the local society, whereas the governing body of a local society of the third class is generally some external organization, so that the application of the criterion in this class of cases calls for adherence to or sanction by such external organization, *irrespective of the action of the majority of the local body.* Identity, however, is the criterion in either case, in the absence of an express trust."

From the foregoing statement of facts, it is quite clear that the plaintiff organization, or rather, the members thereof, were in charge and in control of the church and

possession of its real estate, and the present officers were elected by the members thereof. However, it is necessary to resolve this lawsuit to determine which of the contending organizations is the true successor to the Serbian Eastern Orthodox Church of St. Demetrius.

The sore spot of this lawsuit, and probably the focal point, is the status of former Bishop Dionisije. Charges were filed by the Holy Synod against Dionisije involving moral turpitude, dishonesty and unprofessional conduct in his office. An investigation was made of these charges, involving a conference with the accused. An indictment was drawn up by the Holy Synod. He was given an opportunity of presenting a defense but, instead of doing so, he demanded a delay of six months within which to answer. The Holy Bishops Assembly, which is the supreme ecclesiastical body in the Serbian Eastern Orthodox Church, found the Bishop guilty as charged and removed him from the rank of Bishop of the Serbian Eastern Orthodox Church. There can be no question of the legality and the finality of this decision of the Holy Bishops Assembly, and this Court is not authorized to reverse that decision. In fact, the entire record indicates that Dionisije ignored both the trial and the decision. He responded to the charges brought against him by calling a meeting of the Diocesan Council which, through his leadership, declared its complete autonomy and separation from the patriarchy of the Serbian Eastern Orthodox Church.

Plaintiff members of the St. Demetrius church were in good faith in sympathy with former Bishop Dionisije, and on July 7, 1963, a resolution above referred to as Plaintiff's Exhibit 23-B was adopted. While the resolution affirms that the "canonical ties between the Serbian Orthodox Church in America and Canada and the Serbian Patriarchate in Belgrade shall and must be maintained

in order to secure dogmatic and canonical unity," and further recites that the division of the former diocese into three new diocese was politically inspired, meaning the Communist regime in Yugoslavia, [it] finally declares that as long as the case of Bishop Dionisije is not "justly resolved, the membership of the Church School Congregation" regards the Serbian Orthodox Diocese of the United States and Canada as the only legal authority.

The letters to the applicants for membership and the letter to the church choir indicates that the plaintiff and its associates are rebellious against the removal of Dionisije from the order of Bishops and are still following him as their bishop. They have, in effect, repudiated the Patriarchy of the Serbian Eastern Orthodox Church. It is the opinion of the Court that Dionisije is no longer a Bishop of the Serbian Eastern Orthodox Church and, in fact, has no standing in the canonical Orthodox churches. This is evidenced by the letters introduced in evidence from the various patriarchs, including the Supreme Patriarch Athenagoras.

Plaintiffs assert that the action of the Holy Bishops Assembly, in dividing the old diocese into three new diocese, is in violation of the Constitution of the Diocese and the Constitution of the Mother Church.

The Court of Appeals of Illinois so held in a case involving the property of the old diocese. As we understand the opinion or decision, that Court held that Article 16 did not apply to the diocese named in Article 15 but only applied to the diocese named in Article 14. The position of the plaintiff in the instant case, as we understand it, is that the action of the Holy Bishops Assembly, in dividing the original diocese, was, in effect, an amendment of the diocesan constitution which it had no power to do and further, that it was void and of no effect because the consent of the Patriarchal Council was not obtained.

The evidence shows that the Patriarchal Council has not met for a number of years and that the work of the Patriarchal Council has been, in effect, taken over by the Assembly of Bishops; and since 1937, that procedure has been carried out with the knowledge and consent of all officials of the diocese.

If the Holy Bishops Assembly had the right under Article 16 to divide the original diocese, then it could hardly be said that its action would, in effect, be an amendment of the Diocesan Constitution since the two constitutions must be read together in determining that question.

However, it is not necessary for the Court to decide the validity of the division of the diocese and the establishment of three new diocese. The Mother Church has decided and declared, in effect, that the old diocese does not exist. The diocese, under the leadership of former Bishop Dionisije, has declared that it is no longer part of the Serbian Patriarchy.

This church was organized, as the evidence discloses, as a church of the Serbian Patriarchy. It seems to have been organized about the year 1918. It organized and formed a corporation for the sole purpose of taking title to its real estate, and the Articles of Incorporation include a virtual declaration of trust that said property was held "according to the rules, regulations and customs of the Serbian Orthodox Church."

The by-laws of the church congregation as revised on December 28, 1924, at which time the new diocese was being formed, provides in Article 40 as follows:

> "The Serbian Church School Congregation in Akron, Ohio, is part of the Serbian Orthodox Patriarchy and of the Serbian Orthodox Diocese in America."

In the 1960 revision of the by-laws, the name is changed to Serbian Orthodox Church Congregation of

St. Demetrius of Akron, Ohio, and recites that "the congregation is an integral part of the Serbian Orthodox Diocese of the United States and Canada." That the Serbian Eastern Orthodox Church is a hierarchy is conceded by both parties to this lawsuit and, in fact, the Constitution of the diocese and the Patriarchy spell it out in detail. The Constitution of the Patriarchy, Article 5, recites the order of the various organizations of the church and lists them, including the local church congregation. The diocese itself, as shown by its Constitution, is subservient to the Patriarchy. The Articles of the holding corporation and the original by-laws of the congregation indicate clearly that they were organized and established as part of the Serbian Eastern Orthodox Church and nothing has happened to change that relationship.

Plaintiffs and those in sympathy with them are rebelling against the patriarchy and are following the former bishop who is not a bishop and are considering themselves a part of a church which is not a part of the Orthodox church system and not a part of the Eastern Orthodox Church. Consequently, the evidence in this case identifies the defendants and those in association with them as the successors to the church and who maintain and profess its submission to the Serbian Eastern Orthodox Church.

Holding these views, the Court is of the opinion that the temporary restraining order heretofore allowed should be and the same is hereby dissolved and the petition of the plaintiffs is dismissed.

Coming now to the prayer of the cross petition, the Court finds that the defendants and those in sympathy with them constitute the true Serbian Orthodox Church of St. Demetrius of Akron, Ohio and that the plaintiffs are unlawfully withholding from said defendants and those in sympathy with them the use of the church property and

that the defendants and those in sympathy with them as such church congregation are entitled to possession of said properties.

Counsel for the defendant will prepare and submit an entry in conformity with this opinion.

If an appeal is taken from this decision, the appeal bond will be fixed at One Thousand Dollars ($1,000.00).

This case has been well, earnestly and resourcefully tried by Counsel on both sides, and after trial, Counsel on both sides have furnished the Court excellent and exhaustive briefs; and the Court feels that the Court has before it all the available evidence and all of the legal authorities on the subject which have been most helpful to the Court.

JOURNAL ENTRY OF THE COURT OF COMMON PLEAS.

(Filed in Court of Common Pleas October 28, 1966.)

This cause came on to be heard before the Honorable Judge Edmund L. Matz, sitting in the Summit County Court of Common Pleas by way of assignment, upon the pleadings and the evidence and thereupon the Court makes the following findings and orders:

1. That the Serbian Orthodox Church is an hierarchical church having its see in Belgrade, Yugoslavia.

2. That the true Serbian Orthodox Church of St. Demetrius of Akron, Ohio, was at its inception organized for the purpose of worshipping under the canons, dogmas, customs and usages of said Serbian Orthodox Church and was at its commencement and is now an integral part thereof and that nothing has occurred to change said relationship between the true Serbian Orthodox Church of St. Demetrius of Akron, Ohio, and the said Serbian Orthodox Church.

3. That after the formation of said Serbian Orthodox Church of St. Demetrius of Akron, Ohio, a corporation was organized under the laws of the State of Ohio, which corporation was known as the "Servian Orthodox Church of Akron, Ohio" and that said corporation was organized for the purpose of holding all of the real estate of the church and that all of the real estate belonging to the church was conveyed by the trustees of the said Serbian Orthodox Church of St. Demetrius Church of Akron, Ohio, to said corporation for the purposes set forth in the purpose clause of said corporation, which are as follows:

> "For the purpose of providing a place of worship for its members and conducting the same under suitable religious leadership according to the rules, regulations and customs of the Servian Orthodox Church; for promoting the cause of Christian religion; for receiving, holding and disbursing gifts, bequests and funds from any source; for owning and maintaining suitable real estate and erecting and maintaining thereon suitable buildings and also for maintaining a cemetery and for doing any and all things incident to the above."

and that said corporation holds all of said property of the said Serbian Orthodox Church of St. Demetrius of Akron, Ohio, in trust for the purposes set forth in said purpose clause to be used as an integral part of said Serbian Orthodox Church, said real estate being described as follows:

PARCEL 1:

Situated in the City of Akron, County of Summit and State of Ohio and known as being part of Sublots Nos. 57 and 58 in the 2nd Re-Allotment made for Edward B. Bruch of part of the Miller and Long Allotment of part of original Coventry Township Lot No. 20, Tract No. 9, as shown by the recorded plat

in Volume 8 of Maps, Page 37 of Summit County Records and bounded and described as follows: Beginning at an iron pipe in the Southerly line of Lake Street and the Northerly line of said Lot No. 58 which is 40.00 feet Easterly from the Northwesterly corner of Lot No. 59 of said Allotment; thence South 2° 06′ 30″ West 162.85 feet to an iron pipe in the Southerly line of said Lot No. 58; thence easterly along the southerly line of Lots Nos. 58 and 57, 36.70 feet to an iron pipe; thence North 2° 07′ East 162.85 feet to an iron pipe in the Southerly line of Lake Street and the Northerly line of Lot No. 57; thence Westerly along the Southerly line of Lake Street and the Northerly line of Lots Nos. 57 and 58, 36.72 feet to the place of beginning, be the same more or less, but subject to all legal highways.

PARCEL 2:

Situated in the City of Akron, County of Summit and State of Ohio, and known as being part of Sub-Lot No. 57 in the 2nd Re-Allotment made for Edward B. Bruch of part of the Miller and Long Allotment of part of original Coventry Township Lot No. 20, Tract No. 9, as shown by the recorded plat in Volume 8 of Maps, Page 37 of Summit County Records, bounded and described as follows:

Beginning at an iron pipe at the Northeasterly corner of said sub-Lot No. 57; thence South 2° 07′ 30″ West along the Easterly line of said Sub-Lot, 162.85 feet to an iron pipe at the Southerly corner thereof; thence Westerly along the Southerly line of said Sub-Lot 36.70 feet to an iron pipe; thence North 2° 07′ East 162.85 feet to an iron pipe in the Southerly line of Lake Street and the Northerly line of said Sub-Lot No. 57; thence Easterly along the Southerly line of Lake Street 36.72 feet to the place of beginning, be the same more or less but subject to all legal highways.

PARCEL 3:

Situated in the City of Akron, County of Summit and State of Ohio and known as being Sub-Lots Nos. 56 and 64 in the 2nd Re-Allotment made for Edward B. Bruch of part of the Miller and Long Allotment of part of original Coventry Township Lot No. 20, Tract No. 9, as shown by the recorded plat in Volume 8 of Maps, Page 37 of Summit County Records. Said Sub-Lots are subject to all legal highways.

Parcels Nos. 1, 2 and 3 above, having been deeded to the defendant corporation, named in the deed as The Serbian Orthodox Church, said deed being recorded in Volume 1223, Page 443 of Summit County, Ohio Records.

PARCEL 4:

Situated in the City of Akron, County of Summit and State of Ohio and known as being all of lot number Fifty-nine (59) and a part of Lot Number Fifty Eight (58) of the 2nd Re-Allotment made for Ed Bruch as recorded in Plat Book 8, Page 37, Summit County Records, and more fully described as follows:

Beginning at an iron pin at the Northwest corner of said Lot Number Fifty-Nine (59); thence South 2° 06′ 30″ West along the West line of said Lot 162.85 feet to an iron pipe at the Southwest corner thereof; thence East along the South line of said Lots Fifty-Nine (59) and Fifty-Eight (58) 40.00 feet to an iron pipe; thence North 2 deg. 06′ 30″ East 162.85 feet to an iron pipe in the North line of said Lot Number Fifty-Eight (58) and the South line of Lake Street; thence West along the South line of Lake Street and the North line of said Lots Numbers Fifty-Eight (58) and Fifty-Nine (59) 40.00 feet to the place of beginning as surveyed June 23rd, 1927 by S. G. Swigart and Son.

Said Parcel No. 4 was conveyed to the defendant corporation by deed wherein said corporation is named as Serbian Orthodox Church (St. Demetrius) by deed recorded in Volume 2219, Page 549 of Summit County, Ohio Records.

PARCEL 5:

Situated in the City of Akron, County of Summit and State of Ohio and being known as Lots Nos. 293 and 294 in the Miller Allotment as recorded in Plat Book 7, Page 61 of Summit County, Ohio, Records.

Said Parcel No. 5 was conveyed to the defendant corporation by deeds wherein said corporation was named as Serbian Orthodox Church of Akron.

4. That the plaintiff-association, its trustees, officers and clergy and those in sympathy with them have by their conduct created a schism in the said Serbian Orthodox Church of St. Demetrius of Akron, Ohio, in that the plaintiff and the above mentioned parties have rebelled against the patriarchy and hierarchy and consider themselves a part of a church which is not part of the orthodox system and not a part of the said Serbian Orthodox Church and are not a part of the Eastern Orthodox Church and are not the true Serbian Orthodox Church of St. Demetrius; that the evidence identifies the defendants and those in sympathy and in association with them as the true Serbian Orthodox Church of St. Demetrius of Akron, Ohio, and as the true and rightful successors to the Serbian Orthodox Church of St. Demetrius of Akron, Ohio and to the property being held in trust by the corporation known as the "Servian Orthodox Church of Akron, Ohio," and that said defendants and those in sympathy and in association with them are maintaining and professing their adherence and submission to the said Serbian Orthodox Church and the said Eastern Orthodox Church.

It is, therefore, hereby ORDERED, ADJUDGED AND DECREED that plaintiff, its sympathizers and those in association with them, including the officers, trustees and clergy who claim to be the Serbian Orthodox Church of St. Demetrius of Akron, Ohio, and the corporation the Servian Orthodox Church of Akron, Ohio, and its officers and trustees relinquish their officers and positions of trust and relinquish and deliver possession of all of the church properties of the Serbian Orthodox Church of St. Demetrius of Akron, Ohio, including the above described real estate as well as all personal property, in the possession of either the Serbian Orthodox Church of St. Demetrius of Akron, Ohio, or the corporation known as the "Servian Orthodox Church of Akron, Ohio," both real and personal, including all records of every kind and description to the defendants forthwith, all of which property the plaintiffs are unlawfully withholding from the defendants and those in sympathy with them.

It is the further order of this Court that upon the filing of this entry the plaintiff-association and said corporation, their officers, trustees, followers, sympathizers and clergy are hereby restrained and enjoined from selling, conveying, disposing of, encumbering or committing any waste upon or damage to any of the aforesaid church property whether held in the name of the church itself or by said corporation and it is further ordered that the plaintiff-association, its officers, trustees, followers and clergy are hereby permanently enjoined from using the words "St. Demetrius" as a means of identification for any church organization which they may in the future conduct or maintain.

OPINION OF THE COURT OF APPEALS OF NINTH JUDICIAL DISTRICT OF OHIO.

(Argued June 7, 1967.)
(Decided Aug. 2, 1967.)

HUNSICKER, *J.*

An appeal on questions of law and fact is lodged in this court from a judgment entered by the Common Pleas Court of Summit County, Ohio. That judgment, in its principal part, said:

> "It is, therefore, hereby ordered, adjudged and decreed that plaintiff, its sympathizers and those in association with them, including the officers, trustees and clergy who claim to be the Serbian Orthodox Church of St. Demetrius of Akron, Ohio, and the corporation the Servian Orthodox Church of Akron, Ohio, and its officers and trustees relinquish their offices and positions of trust and relinquish, and deliver possession of all of the church properties of the Serbian Orthodox Church of St. Demetrius of Akron, Ohio, including the above described real estate as well as all personal property, in the possession of either the Serbian Orthodox Church of St. Demetrius of Akron, Ohio, or the corporation known as the 'Servian Orthodox Church of Akron, Ohio,' both real and personal, including all records of every kind and description to the defendants forthwith, all of which property the plaintiffs are unlawfully withholding from the defendants and those in sympathy with them."

The matter comes on to be heard upon a petition, and an amended answer and cross petition to which was attached ninety-six interrogatories.

A motion to strike from the files such amended answer and cross petition or, in the alternative, to require the defendants-appellees to redraft and reform such pleading, was filed in the trial court, and overruled. Inasmuch

as this is a trial de novo, the plaintiff-appellant presents this motion for this court to rule upon. It is not difficult to determine that the amended answer and cross petition is prolix to the extreme, and does not meet the requirement of good pleading as stated in the statutes. (See Chapter 2309, Ohio Revised Code.) Most of the verbiage of the answer and cross petition is evidentiary in character and, hence, has no place in a pleading. We are, however, met with a practical problem. The case has been orally argued and submitted to this court. Long and exhaustive briefs have been filed. All of the evidence (much of which is extraneous to the real issue involved herein), is before this court by way of typed and printed material. To now strike from the files this pleading, and again hear the matter on a new or changed pleading, would work a hardship on all parties, including this court. For the foregoing reasons only, we overrule the motion of the plaintiff-appellant and proceed to decide this case on its merits.

The plaintiff-appellant, Serbian Orthodox Church Congregation of St. Demetrius of Akron, Ohio, says: it is an unincorporated association organized for religious worship, and has been in existence since 1918; the name "St. Demetrius Church" represents the group that has such continuous existence; another group of people are now using that name, or one so similar as to be confusing to the people of this community; such conduct of this latter group will "lessen the value of the good will that has come to be attached to the name of 'St. Demetrius' * * *" and "irreparable harm and damage" will be caused this plaintiff-appellant, for which it has no adequate remedy at law. An injunction is asked for, and other relief as is proper.

The amended answer and cross petition, among many things, says:

"1. The association which has filed and is prosecuting this action is not the Serbian Orthodox Church Congregation of St. Demetrius of Akron, Ohio, but is a schismatic group unlawfully and wrongfully ignoring and disobeying the orders and directives of said Church and wrongfully and unlawfully using the name of said congregation and this action which they have no capacity or right to prosecute; nor is the common religious worship in which said group is engaged the worship of the Serbian Orthodox Church; * * *".

Reduced to its simplest terms, this action (one of many in the United States), concerns the church administration and religious affiliation of followers of Serbian Orthodoxy. To which shall the religious allegiance of these people be pledged—Libertyville, or Belgrade? To whom does the church on Lake Street, and the affiliated properties, belong? These are some of the questions in this case. To decide these issues, it is necessary to determine the power of the Belgrade hierarchy over the church of St. Demetrius and the diocese of which it must be a part in order for it to be a Serbian Orthodox church.

This court, when confronted with a somewhat similar situation in Lorain County, Ohio, in the case of *Ralich, et al., v. Vukelich, et al.*, No. 1710, decided June 29, 1966, said:

"The Serbian Eastern Orthodox Church is hierarchal and episcopal in structure, as distinguished from autonomous and congregational. The structure, in general, is: a mother church, dioceses, and parishes. The mother church is administered by a Holy Assembly of Bishops, which is presided over by a Patriarch; the diocese by a bishop, and the parish by a priest. The Holy Assembly of Bishops consists of all bishops of the Church at home and abroad, and the Patriarch is chosen from this body. The executive arm of the Church is a Holy Synod, and this, too, is presided

over by the Patriarch. The Holy Synod, acting for the Holy Assembly of Bishops, is supreme in ecclesiastical matters. The mother church, as well as the dioceses, have a written constitution, and the parishes have by-laws, which govern their operations. One of the prerogatives of the mother church is the creation of dioceses and bishops.

"Pursuant to its right, the geographically large diocese of the United States and Canada was divided by the mother church into an Eastern, a Midwestern, and a Western diocese. The Bishop of the Midwestern diocese, who had been the Bishop of the Diocese of the United States and Canada, opposed the division, although he had originally requested it. A controversy arose, which caused the mother church to depose that Bishop, and name a new Bishop to be the chief pastor. This deposed or unfrocked Bishop then sought to enlist various parishes to recognize him as their true Bishop, and thereby establish an American branch of the Church, separate and apart from control by the Holy Assembly of Bishops, the Holy Synod, and the Patriarch in Belgrade, Yugoslavia."

We freely admit that such pronouncement was not necessary to a decision in that case. We shall examine the subject again in the light of the evidence before us to determine whether the views there expressed need now be adopted in toto in this action.

The chief claim of the parties herein revolves around the right to occupy and use the real property owned by the parish of St. Demetrius. The plaintiff-appellant says that it has such right because, as a part of the diocese originally established as the "Diocese of the United States of America and Canada," its constitution, accepted by the church in Belgrade, Yugoslavia, at the time this diocese was acknowledged by the mother church, provided for full administrative powers to rest in the local diocese, and the only subjection to the mother church was in ecclesiastical

matters. The defendants-appellees, adherents of the Patriarch of Belgrade, insist that all power of administrative control belongs to the administrative authorities of the church in Yugoslavia.

There are two constitutions which must be examined, and interpreted, to reach a conclusion in this matter: first, the constitution of the Diocese of the United States of America and Canada; and, second, the constitution of the Serbian Orthodox Church in Yugoslavia, also called "Servian Orthodox Church." If the local diocese is autonomous, then the position of the plaintiff-appellant is correct; if not, then it must be considered in violation of lawful church authority, and its right to control the church, and its property, must be denied.

There is no question but that the plaintiff-appellant follows a faction that insists it is an autonomous church. Prior to this declaration of autonomy, there was complete ecclesiastical power in the mother church. We believe it is the right of the mother church to create and depose bishops, and, with that matter, this court will not interfere. We direct ourselves only to the right of the church in Belgrade to change the geographical area of the American-Canadian Diocese without the approval of that diocese. We do not deem it necessary to discuss the claims that the Holy Assembly of Bishops, or the Holy Episcopal Council of the Serbian Orthodox Church, wrongfully deposed a bishop of the American-Canadian Diocese. We do not discuss the attempt of such bishop to be recognized by other orthodox patriarchs as the leader of an autonomous American Serbian Church. That subject is not a matter for the civil courts to determine.

The plaintiff-appellant adheres to the original diocese; with the deposed bishop at its head; the defendants-appellees adhere to a newly created diocese known as the

"Midwestern Diocese." If there was no unilateral power to change the diocesan territory, then the Diocese of the United States of America and Canada is still in existence, and it is to that diocese that the local church owes allegiance. If we assume such latter statement to be a conclusion herein, then it is the duty of the mother church to designate a new bishop to assume the function of bishop of the "Diocese of the United States of America and Canada."

This court has heretofore accepted the following rule in cases similar to that before us:

> "The general rule, as it applies to religious societies which are in association with an ecclesiastical system, is that, where one or many of the members withdraw from the general church, such withdrawing members cannot take with them any of the church property owned by the church."
>
> *The Russian Orthodox Greek Catholic Church etc. v. Burdikoff, et al.*, 117 Ohio App. 1.

The church of St. Demetrius was in existence; as were many other churches of the Serbian Eastern Orthodox rite, prior to the establishment of an American-Canadian diocese. It was in 1920 or 1921, after a special commission report by Bishop Jefrem, that an American-Canadian diocese was established by the church in Yugoslavia. Its purpose was to bring together all of the churches in America that followed the rite or liturgy of the Serbian Eastern Orthodox church.

We direct our inquiry to the following documents introduced in evidence: the Law and Constitution of the Serbian Orthodox Church (1931); the Constitution of the Serbian Orthodox Church (1957); the Constitution—Serbian Orthodox Diocese in the United States of North

America and Canada (1935); the Constitution and Bylaws of the Serbian Orthodox Church School Congregation of St. Demetrius, Akron, Ohio (1818); Bylaws of the Serbian Orthodox Church School Congregation of St. Demetrius, Akron, Ohio (1960); and the Articles of Incorporation of The Servian |Serbian| Orthodox Church of Akron, Ohio.

In June, 1919, the Servian |Serbian| Orthodox Church of Akron, Ohio, was incorporated as a religious organization, with its worship to be according to the rules, regulations and customs of the Servian |Serbian| Orthodox Church. Since that time until the present controversy, the congregation known as the Serbian Orthodox Church School Congregation of St. Demetrius has been worshiping according to that rite. Upon the establishment, by the mother church (in what is now called Yugoslavia), of the diocese of the United States of North America and Canada, St. Demetrius became then, and has since consistently been a part of, such diocese. Whether it should now be a part of that diocese depends upon the relation of that diocese to the mother church, and the power of the mother church to change the geographical limits of that diocese.

Article 1 of the Bylaws of the Serbian Orthodox Church School Congregation of St. Demetrius, Akron, Ohio, adopted in 1960, says:

> "The name of the Serbian Church School Congregation of Akron is: Serbian Orthodox Church Congregation of St. Demetrius of Akron, Ohio.
>
> "The seat of the Congregation is in the city of Akron, state of Ohio, United States of America. The Congregation is an integral part of the Serbian Orthodox Diocese of the United States and Canada. In accordance with Articles 4 and 68 of the Diocesan Constitution, the Congregation submits itself to the regulations of the Diocese and directives of the

> Diocesan authorities. The official language of the church school congregation is American and Serbian."

Article 18 of the Bylaws reiterates this statement by the following provision:

> "The Serbian Church in Akron is an integral part of the Serbian Orthodox Diocese of the United States and Canada. It accepts and follows all regulations and laws governing the diocese. As such it accepts and executes all decrees and decisions from the diocese."

The Bylaws further, in Article 21, state that "the only legal owner of all holdings is the congregation." "Holdings" is defined as money, personal property, and real property.

The congregation of St. Demetrius was an integral part of that Serbian Orthodox diocese which governed the geographical area of Akron, Ohio. If such diocese still exists, then St. Demetrius remains in that diocese.

When St. Demetrius became a part of the diocese in the United States, the Serbian Orthodox Church in Yugoslavia was a state church under the theory of—one state, one church. Those who controlled that church must be citizens of Yugoslavia; the Constitutions of 1931 and 1957 so specify. The Serbian Orthodox Church Constitution of 1931, in Article 262, establishes a Chancery of Administration "which performs administrative work of the Church self-government according to the directives and under the supervision of the Patriarchal Executive Board and under the supreme supervision of the Patriarch. The Chancery of Administration has these departments: General, Economic, and Financial."

Throughout the Serbian Orthodox church constitutions of 1931 and 1957, reference is frequently made to two divisions within the church, i.e., the ecclesiastical-

hierarchical, and church-administrative bodies and organs. In both of these constitutions, there is a separate article dealing with dioceses other than those within the territorial limits of Yugoslavia. In such article, the "Serbian Orthodox Church in the United States of America and Canada with its see in Chicago" is named. In the 1957 constitution, these words are added: "* * * or in the monastery of St. Sava, in Libertyville, Illinois."

Article 15 of the Constitution of 1931, and Article 16 of the Constitution of 1957, say:

> "The decisions concerning the creation, name, abolition, districting and the sees of the Dioceses, and concerning the creation and abolition of the positions of the Suffragan Bishops are rendered by the Holy Assembly of Bishops in accord with the Patriarchal Council."

The Constitution of the Serbian Orthodox Diocese in the "United States of North America and Canada," published in 1939, says that it was accepted at the Diocesan Church-National Assembly in 1927, amended 1931 and 1938, and was accepted by the Holy Bishop's Assembly of the Serbian Orthodox Church.

In the "First Part" of this latter constitution, under "Position of the Serbian Orthodox Diocese in the United States of North America and Canada," it provides that such diocese is "considered ecclesiastically-judicially as an organic part of the Serbian Patriarchate * * *;" all statutes and rules which regulate the ecclesiastical-canonical authority and position of the Serbian Orthodox Church are compulsory for the American-Canadian Diocese; the American-Canadian Diocese enjoys full administrative freedom, and can independently regulate and rule the activities of its church, school, and other diocesan institutions; the diocesan authorities decide in-

dependently on all matters within their jurisdiction, and in accordance with the diocesan constitution.

Also, in the "First Part" of the Constitution of the American-Canadian Diocese, in Article 12, it is provided that "* * * the Diocesan Bishop shall submit to the Serbian Patriarch for review, all regulations which may be issued by any diocesan authority, which shall if they touch upon the sphere of internal church administration, be subject to the approval of the Holy Pontifical Synod, as the highest executive church authority."

In that Article 12, it further says:

"The Diocesan Bishop in the United States of America and Canada is obliged to recognize as the head of the Serbian Patriarchate, the Archbishop of Ipek, Metropolitan of Belgrade-Karlovac and Serbian Patriarch, whom he mentions in all services. He shall not make any changes or innovations in the established order and work of the church without prior agreement with him.

"Accordingly, the Diocesan Bishop shall submit to the Serbian Patriarch for review, all regulations which may be issued by any diocesan authority, which shall if they touch upon the sphere of internal church administration, be subject to the approval of the Holy Pontifical Synod, as the highest executive church authority.

"Should the Diocesan Bishop find by his own assurance, that decisions rendered by any church authority or organ are contrary to the teachings of the Holy Church, her regulations and canons, or to the vital interests of the church, he shall halt the execution of such decision and submit the matter for re-discussion and re-decision. If he again is not in accordance with the re-decision as re-considered, he shall submit the case for final decision to a higher authority and if necessary, to the Holy Pontifical Synod."

In Article 147 of the Constitution of the American-Canadian diocese is the following provision:

> "The property of the Church-School Congregation in individual colonies belongs exclusively to the said congregation without Diocesan rights to same. Only in the event of request by the membership of said congregation, does the Diocese have the right to control same."

It is apparent from a study of the constitutions that the church in America and Canada retained full administrative freedom and is only "an organic part of the Serbian Patriarchate ecclesiastically-judicially." As was said in the case of *Serbian Eastern Orthodox Diocese etc., et al. v. Firmillan Ocokoljich*, 72 Ill. App. 2d 444; 219 N.E.2d 343:

> "Further, the Diocese [American-Canadian] did not surrender to the Serbian Patriarchate the power to alter or change its basic governing law—its Constitution. The Serbian Patriarchate was not given the power to initiate changes in the Diocesan Constitution, but was only given the power to approve changes to the Constitution introduced and adopted by the Diocesan Assembly. It is inconceivable to us that the Serbian Patriarchate, which is denied the express power to alter or amend the Constitution of the Diocesan, has the implied power to totally revoke and abrogate this constitution by decreeing the Diocese to no longer be in existence. We cannot accept such conclusion and find the Constitution of the Serbian Patriarchate and that of the Diocese consistent in this regard."

It is our conclusion, after an examination of the issues presented to us, that the "Constitution of the Serbian Orthodox Diocese in the United States of North America and Canada" does not grant to the mother church in Yugo-

slavia the power to unilaterally divide the diocese into several dioceses. It is within the province of that church to appoint a new bishop to regulate the American-Canadian diocese only within the terms of the American-Canadian Constitution. In this conclusion, we change the view we expressed on that subject in the case of *Ralich, et al. v: Vukelich, et al., supra.*

The true identity of St. Demetrius before the present schism was allegiance to the Patriarch of Belgrade, and it is to those who recognize his authority to appoint a new bishop for the American-Canadian Diocese who have the right to control the Church of St. Demetrius. When Bishop Dionisije sought to declare that there existed an autonomous church in America and Canada, with himself as its bishop, he effectively separated those who followed him from all claims to control the church properties of the congregation of St. Demetrius as it existed prior to the schism.

The injunction sought by the plaintiff-appellant is denied. Relief is granted to the defendants-appellees as was entered in the Court of Common Pleas. A journal entry shall be filed in accord with the judgment reached herein.

Decree for the defendants-appellees.

BRENNEMAN, *P.J.*, and DOYLE, *J.*, concur.

OPINION OF THE COURT OF APPEALS OF NINTH JUDICIAL DISTRICT ON MOTIONS AND APPLICATIONS.

(Argued Sept. 26, 1967.)

(Decided Oct. 11, 1967.)

PER CURIAM:

In the above captioned case, several motions, and pertinent papers, have been directed to this Court, all of which matters we will determine in this one opinion.

These motions and applications, in their order of filing, are:

1. Motion by plaintiff-appellant for a supplemental opinion, and answer to interrogatories.

2. Motion by plaintiff-appellant for conclusions of fact found separately from conclusions of law.

3. Proposed conclusions of fact and proposed conclusions of law submitted by plaintiff-appellant.

4. Motion to strike from the files the motion of plaintiff-appellant for a supplemental opinion, and answer to interrogatories.

5. Objections to proposed conclusions of fact and conclusions of law submitted by plaintiff-appellant, with suggested conclusions of fact and conclusions of law, as proposed by defendants-appellees.

6. Answer to the motion that requests this Court to strike plaintiff-appellant's motion for supplemental opinion.

The request to write a supplemental opinion is, after thorough consideration, denied. We believe that in the opinion as written, and in the following conclusions of fact and conclusions of law, all of the matters that the law requires and permits us to say, concerning this controversy, is stated. This Court will not interfere in the internal affairs of the Serbian Orthodox Church of St. Demetrius.

The denial of the motion for a supplemental opinion disposes of all matters except the conclusions of fact found separately from the conclusions of law. This latter matter is a statutory duty which we recognize, and with which we will comply.

CONCLUSIONS OF FACT.

1. In June, 1919, the Servian [Serbian] Orthodox Church of Akron, Ohio, was incorporated as a religious organization, with its worship to be in accordance with the rules, regulations and customs of the Servian [Serbian] Orthodox Church. Since that time until the present controversy, the congregation known as the Serbian Orthodox Church School Congregation of St. Demetrius has been worshipping according to that rite.

2. Upon the establishment of the Diocese of the United States of North America and Canada by the mother church with its See now in Belgrade, Yugoslavia, this Church of St. Demetrius became a part of that Diocese and, thus, a part of the Serbian Orthodox Church, with its mother church in what is now Yugoslavia.

3. The Serbian Orthodox Church is hierarchal and episcopal in structure, as distinguished from autonomous and congregational.

4. Those who presently control the Church of St. Demetrius, and its property, are part of a faction that claims full ecclesiastical autonomy and, hence, are not subject to the mother church in Belgrade, Yugoslavia.

5. Those who presently control the Church of St. Demetrius, and its property, are a schismatic body.

CONCLUSIONS OF LAW.

1. The mother church in Belgrade, Yugoslavia, may depose and change bishops of the Diocese of the United States of North America and Canada without prior consultation with the members of the Diocese.

2. The mother church, now in Belgrade, Yugoslavia, has no power to unilaterally change the geographical limits of the Diocese to which St. Demetrius owes allegience; such power, under the Constitution of the Diocese of the United States of North America and Canada, rests in the cooperative effort of the mother church and the Diocese.

3. The general rule, as it applies to religious societies which are in association with an ecclesiastical system, is that, where one or many of the members withdraw from the general church, such withdrawing members cannot take with them any of the church property owned by the church.

4. Those who presently control the Church of St. Demetrius, and its property, being in schism, have forfeited all right of membership in the Serbian Orthodox Church and in the Church of St. Demetrius.

5. Those who presently control the Church of St. Demetrius have no right of property in such church, and no right in its real and personal property.

6. Those who presently control the Church of St. Demetrius have no right to worship in, or occupy any of the property of, such church.

7. The right of anyone in schism to return to worship in the Church of St. Demetrius must be determined under the constitution and by-laws of that Church, its Diocese and its mother church, and by their church bodies only.

On September 27, 1967, the defendants-appellees requested of this court oral argument on their motion to

secure possession of the entire church premises, or, in the alternative, for the appointment of a receiver to take charge of such property. This request is denied.

This court orders that a journal entry be filed in this case within ten (10) days of the filing of these conclusions of fact found separately from conclusions of law; otherwise, this court will enter its own order.

MYRON T. BRENNEMAN,
Presiding Judge.

OSCAR HUNSICKER,
Judge.

ARTHUR W. DOYLE,
Judge.

JOURNAL ENTRY OF THE COURT OF APPEALS OF NINTH JUDICIAL DISTRICT.

(Filed October 23, 1967.)

This appeal on questions of law and fact from a judgment entered by the Common Pleas Court of Summit County was heard on the transcript of testimony, on the exhibits admitted in that court, and on the written briefs of the parties followed by oral argument to this court. Following an opinion of this court rendered on August 2, 1967, plaintiff-appellant and defendant-appellees both submitted further requests to this court, and the court now, in disposition of all matters before it, makes the following findings and orders:

1. In June, 1919, the Servian [Serbian] Orthodox Church of Akron, Ohio, was incorporated as a religious organization, with its worship to be in accordance with the rules, regulations and customs of the Servian [Serbian]

Orthodox Church. Since that time until the present controversy, the congregation known as the Serbian Orthodox Church School Congregation of St. Demetrius has been worshipping according to that rite.

2. The Church of St. Demetrius was in existence prior to the establishment of an American-Canadian Diocese. Upon the establishment of the Diocese of the United States of North America and Canada by the mother church with its See now in Belgrade, Yugoslavia, the Church of St. Demetrius became a part of that Diocese, and has since consistently been a part of that Diocese and thus part of the Serbian Orthodox Church with its mother church in what is now Yugoslavia.

3. The Serbian Orthodox Church is hierarchical and episcopal in structure, as distinguished from autonomous and congregational.

4. The mother church in Belgrade, Yugoslavia, may depose and change bishops of the Diocese of the United States of North America and Canada without prior consultation with the members of the Diocese.

5. The mother church now in Belgrade, Yugoslavia, has no power to unilaterally change the geographical limits of the Diocese to which St. Demetrius owes allegiance; when the mother church in 1963 attempted to divide the Diocese of the United States of North America and Canada, it had no power to do so; such power rests in the cooperative effort of the mother church and the Diocese.

6. Those who presently control the Church of St. Demetrius and its property are part of a faction that claims full ecclesiastical autonomy from the Serbian Orthodox Church and hence are a schismatic body.

7. The schismatic acts of those now in control amount to a withdrawal from the general church and the schis-

matics cannot, after such withdrawal, take with them any of the property owned by the church, nor exercise membership rights in the Serbian Orthodox Church and in the Church of St. Demetrius.

8. That faction now in control of St. Demetrius has no rights in the real and personal property of St. Demetrius, nor any present right to participate in the control of the church's property or its services.

9. That faction now in control of St. Demetrius has no right to worship as a group in St. Demetrius. Individual members of that faction may acquire rights of membership in St. Demetrius only in accordance with the Bylaws of St. Demetrius, in accordance with the Constitution of the Serbian Orthodox Church in the Diocese of the United States of North America and Canada and in accordance with the Constitution of the Serbian Orthodox Church with its See in Belgrade.

10. The motion of plaintiff-appellant for a supplemental opinion is denied as are defendant-appellees' motion to strike and their request for oral argument on their motion to secure immediate possession.

11. In accordance with the judgment herein rendered, the injunction sought by the plaintiff-appellant is denied; and it is ORDERED, ADJUDGED and DECREED that plaintiff-appellant, by its officers, relinquish within twenty-one days of the date of this entry all of the church properties of the Serbian Orthodox Church of St. Demetrius of Akron, Ohio, to defendant-appellees, as representatives of the Serbian Orthodox Church School Congregation of St. Demetrius, of Akron, Ohio, and that the defendant corporation, The Servian Orthodox Church of Akron, Ohio, by its officers and trustees, relinquish all its corporate holdings to defendant-appellees as representa-

tives of the Serbian Orthodox Church School Congregation of St. Demetrius of Akron, Ohio.

Should an appeal ensue, supersedeas bond is fixed in the sum of Five Thousand Dollars ($5,000.00). The bond previously filed in this matter in that amount shall operate as a continuing stay of this judgment until any such appeal be finally determined.

If no appeal ensues, the supersedeas bond heretofore filed in this proceeding shall remain in full force and effect until the order contained in Paragraph 11 is complied with and until the further order of this Court.

ORDER OF THE SUPREME COURT OF OHIO OVERRULING MOTION TO CERTIFY.

(January 17, 1968.)

It is ordered by the Court that this motion is overruled.

ORDER OF THE SUPREME COURT OF OHIO DISMISSING APPEAL AS OF RIGHT.

(January 17, 1968.)

This cause, here on appeal as of right from the Court of Appeals for Summit County, was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

It is further ordered that the appellee recover from the appellant its costs herein expended; that a mandate be sent to the Common Pleas Court to carry this judgment into execution; and that a copy of this entry be certified to the Clerk of the Court of Appeals for Summit County for entry.

ORDER OF THE SUPREME COURT OF OHIO DENYING REHEARING.

(February 14, 1968.)

It is ordered by the court that rehearing in this case is denied.

ORDER OF THE SUPREME COURT OF THE UNITED STATES REMANDING THE CASE TO THE SUPREME COURT OF OHIO.

(No. 91. Decided February 24, 1969.)

PER CURIAM.

The petition for a writ of certiorari is granted, judgment is vacated, and the case is remanded to the Supreme Court of Ohio for further consideration in light of *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, *ante*, p. 440.

OPINION OF THE SUPREME COURT OF OHIO REMANDING THE CASE TO THE COURT OF APPEALS.

(Decided March 4, 1970.)

Per Curiam. This case is before the court upon remand by the Supreme Court of the United States for further consideration in light of that court's decision in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church* (1969), 393 U.S. 440, 89 S. Ct. 601.

Before a controversy arose in 1963, both plaintiff and defendants were a part of the church membership of the Serbian Orthodox Church Congregation of St. Demetrius of Akron, Ohio. The plaintiff is now an unincorporated association in possession and control of the church prop-

erty and uses the church name. Defendants are out of possession of the church property and claim to be parishioners of the Serbian Orthodox Church of St. Demetrius of Akron, Ohio, describing themselves as St. Demetrius Church Parishioners for the Unity of the Serbian Orthodox Church, Akron, Ohio, and the "Committee for St. Demetrius Church Parishioners for the Unity of the Serbian Orthodox Church, Akron, Ohio."

In the instant case, plaintiff seeks to enjoin defendants from using the name "St. Demetrius," or "St. Demetrius Church," or "St. Demetrius Church Parishioners." Defendants' cross-petition essentially asks the court to hold that plaintiff is unlawfully withholding and usurping defendants' rights to the use of the church property; that plaintiff be enjoined from the prosecution of this action and from representing itself to be the Serbian Orthodox Church Congregation of St. Demetrius of Akron, Ohio; that plaintiff also be restrained from exerting any further control over the church's affairs, management, and control of the property and assets of the church; and that all such control be transferred to a temporary "Caretaker Board."

The Court of Common Pleas ruled for defendants on their cross-petition, and ordered plaintiff to relinquish management and control of the church property and to vacate positions of trust in the church organization.

In essence, the Court of Appeals found, as follows:

That in June 1919 the Serbian Orthodox Church of Akron, Ohio, was incorporated, and the congregation was known as the Serbian Orthodox Church School Congregation of St. Demetrius; that the corporation was a part of the American-Canadian Diocese, and thus a part of the Serbian Orthodox Church Mother Church in Yugoslavia; that the Mother Church is hierarchical and episcopal in

structure, as distinguished from autonomous and congregational; that the Mother Church has no power unilaterally to change the geographical limits of the American-Canadian Diocese, although bishops may be deposed and changed by the Mother Church without consulting the diocese; and that because of plaintiff's acts of claiming full ecclesiastical autonomy, found plaintiff to be composed of schismatics who have no right to control church property or to participate in the control of church property or services or to worship as a group of St. Demetrius. Plaintiff association was ordered to relinquish control of all church property and corporate holdings.

Our review is for the purpose of examining the above findings and orders in the light of the *Hull Memorial* case, *supra*, which was a dispute between the Presbyterian Church in the United States (General Church) and two local Georgia churches, one of which was the Mary Elizabeth Blue Hull Memorial Presbyterian Church. The Presbyterian Church is hierarchical in organization rather than congregational.[1] The membership of the two local churches, believing that the general church had substantially deviated from church doctrine and practice, withdrew from the general church.

According to Georgia law, when the local church joined the general church, control of the local church property passed to the general church and an implied trust arose under which such control would continue as long as the general church did not abandon or depart from the tenets of faith and practice it held at the time the local

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[1] A hierarchical church is generally one in which authority is exercised by laymen and ministers organized in an ascending successions of judicatories, while a congregational church is one in which each local church is self-governing. Note, *Judicial Intervention in Disputes Over the Use of Church Property*, 75 Harv. L. Rev. 1142, 1143, citing Sperry, Religion in America.

church became affiliated. The Georgia court asked the jury to determine whether the general church had abandoned or departed from the conditions of the implied trust. Mr. Justice Brennan, in his opinion, pointed out the error in submitting that question to the jury, stating (89 S. Ct., at 606):

> "The Georgia courts have violated the command of the First Amendment. The departure-from-doctrine element of the implied trust theory which they applied requires the civil judiciary to determine whether actions of the general church constitute such a 'substantial departure' from the tenets of faith and practice existing at the time of the local churches' affiliation that the trust in favor of the general church must be declared to have terminated. This determination has two parts. The civil court must first decide whether the challenged actions of the general church depart substantially from prior doctrine. In reaching such a decision, the court must of necessity make its own interpretation of the meaning of church doctrines. If the court should decide that a substantial departure has occurred, it must then go on to determine whether the issue on which the general church has departed holds a place of such importance in the traditional theology as to require that the trust be terminated. A civil court can make this determination only after assessing the relative significance to the religion of the tenets from which departure was found. Thus, *the departure-from-doctrine element of the Georgia implied trust theory requires the civil court to determine matters at the very core of a religion—the interpretation of particular church doctrines and the importance of those doctrines to the religion. Plainly, the First Amendment forbids civil courts from playing such a role.*" (Emphasis added.)

The opinion (89 S. Ct., at 606) clearly restricts the determination of the right to possession and control of

church property to the utilization of neutral law principles, by the following language:

> "* * * Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. *And there are neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded.* But First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice. If civil courts undertake to resolve such controversies in order to adjudicate the property dispute, the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern. Because of these hazards, the First Amendment enjoins the employment or organs of government for essentially religious purposes, *School District of Township of Abington, Pa., v. Schempp*, 374 U. S. 203, 83 S. Ct. 1560, 10 L. Ed. 2d 844 (1963); the Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine. Hence states, religious organizations, and individuals must structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions." (Emphasis added.)

Before surveying the Court of Appeals' findings and orders in light of the decision in the *Hull Memorial* case, a further reference to the facts of the instant case is helpful. Insofar as our case is concerned, plaintiff and defendants were able to worship at the church property until this controversy exacerbated. The root cause of the strife in this church (as well as other Serbian Orthodox Churches in the United States) is that there were some members

who were disturbed by the relationship between the Mother Church, headquartered at Belgrade, Yugoslavia, and the government of that country. This undercurrent of unrest was precipitated into a polarized controversy when the ruling body of the Mother Church ordered that there were to be three dioceses in the United States and Canada instead of the existing one. Bishop Dionisije was the Bishop of the American-Canadian Diocese and he and his followers (plaintiff) deny the power of the Mother Church to do away with that single diocese. Defendants, to the contrary, adhere to the Belgrade decision. Dionisije was investigated, charged, tried, and found guilty of transgressions against the church and was ordered defrocked by the Holy Episcopal Council, the highest ecclesiastical, judicial body of the Serbian Orthodox Church.

Briefly stated, our inquiry is: Did the Court of Appeals base its judgment, awarding possession and control of the property involved, upon consideration of whether the parties had adhered to or departed from church tenets and doctrine, or did it base its judgment upon principles of neutral law?

The answer lies in the appraisal of the findings of that court. The Court of Appeals' factual findings regarding the name, incorporation, the hierarchical form of organization, and plaintiff's claim of autonomy from the Mother Church did not require a decision involving church doctrine or tenets.

That court arrived at legal conclusions relative to the organizational relationship, powers and duties of the Mother Church concerning the appointment of a bishop for the Diocese of the United States and Canada, and the Mother Church's attempt to eliminate the diocese. While we recognize that these matters of internal church organi-

zation are chronic sources of disagreement for the parties and are frequently mentioned in the pleadings, briefs and arguments, the findings of the Court of Appeals are unnecessary and immaterial to a *neutral* law inquiry utilizing principles of law developed for use in *all* property disputes. Further, the *Hull Memorial* case offers the strong suggestion that civil courts cannot constitutionally determine matters of church government. In that case, the court's opinion cites with approval *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94, 97 L. Ed. 120, where, at page 116, the court said:

> "* * * The opinion [*Watson v. Jones*, 80 U.S. 679, 20 L. Ed. 666] radiates * * * a spirit of freedom for religious organizations, and independence from secular control or manipulation—in short, power to decide for themselves, free from state interference, matters of *church government* as well as those of faith and doctrine. *Freedom to select the clergy, where no improper methods of choice are proven, we think, must now be said to have federal constitutional protection as part of the free exercise of religion against state interference.*" (Emphasis added.)

In addition, the Court of Appeals found that the members of plaintiff association have performed schismatic acts amounting to a withdrawal from the general church. The essence of this finding must lie in a judicial determination that plaintiff has acted contra to the doctrine and tenets of the church. In order to make such a finding the Court of Appeals had to examine plaintiff's activity as well as church doctrine and tenets. The *Hull Memorial* case, *supra*, held that a jury could not make such an examination, and the viability of the principle of the *Hull Memorial* case commands the same judicial abstinence in the instant case.

After our elimination from consideration of those Court of Appeals' findings regarding church organization on the basis that they are immaterial to a neutral law inquiry, and the elimination of the finding of schism because of the principle of the *Hull Memorial* case, what neutral law principles are available as standards in the evaluation of the merits of this dispute? We look to the ordinary indicia of property rights. The Articles of Incorporation of the Servian [Serbian] Orthodox Church of Akron, Ohio, dated June 21, 1919, show that a corporation not for profit was established under the general corporation laws of Ohio. The Articles reveal that the corporation was formed "for the purpose of providing a place of worship * * * according to the rules, regulations and customs of the Servian [Serbian] Orthodox Church * * * for receiving, holding and disbersing [sic] gifts, bequests and funds from any source; for owning and maintaining suitable real estate and erecting and maintaining * * * building, and * * * a cemetery * * * *."

Recorded deeds show that the corporation holds legal title to all church property. A review of Ohio law does not reveal recognition of an implied-trust theory of real property when a local church joins a church hierarchy. Even if it were to have existed, civil judicial cognizance of it is deemed unconstitutional if it necessitates a court deciding church doctrine. There are no deeds or other written evidence of conveyance from the local congregation, either to the diocese or the Mother Church. Moreover, the Constitution and By-Laws of the Serbian Orthodox Church School Congregation of Akron provides, in part "The congregation may independently function only in the matters relative to the material holdings (properties) of the congregation." Therefore, in the absence of a conveyance of the property by legal instruments or the existence of an ex-

press trust, the title to the property is vested in the corporation.

We note that, in deciding church controversies, civil courts have had occasion to examine decisions made by a church body's tribunal, established to decide disputes. See *Watson v. Jones, supra* (80 U.S. 679); Note, *Judicial Intervention in Disputes Over the Use of Church Property*, 75 Harv. L. Rev. 1142, 1162. In the *Watson* case, the court said, at page 729:

> "* * * It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for."

Commenting on the *Watson* case, Justice Brennan, in the *Hull Memorial case* (89 S. Ct., 605) said: "*The logic of this language leaves the civil courts no role in determining ecclesiastical questions in the process of resolving property disputes.*"

In the case at bar, we are not confronted with the problem of whether we can constitutionally order the enforcement of a determination made by an ecclesiastical tribunal. Other than the order creating the three new dioceses, the record fails to indicate an ecclesiastical tribunal's determination concerning the power of the Mother Church to eliminate the American-Canadian Diocese. The record does not illustrate that plaintiff has been ecclesiastically adjudicated to be outside the church doctrine because of the commission of certain acts. Additionally, the determination of the status of Bishop Dionisije, who was ecclesiastically adjudged defrocked, is frequently mentioned but remains unnecessary to our inquiry. Any

question concerning court enforcibility of such a church determination is not before us.

All the agonies of a church controversy are discernible from a review of this case, but we are convinced by the rule of the *Hull Memorial* case that the civil court's role as a tribunal to bring order to church controversies is narrowly limited.

The control of the name and property, of the Serbian Orthodox Church Congregation of St. Demetrius of Akron, Ohio, must be determined only by reference to the provisions of the Code of Regulations and By-Laws of the corporation not for profit, the corporate laws of this state, and any other secular instruments not requiring the resolution of religious tenets or doctrine.

For the foregoing reasons the judgment of the Court of Appeals is reversed and the cause is remanded to that court for further proceedings in accordance with this opinion.

Judgment reversed.

O'NEILL, SCHNEIDER, HERBERT, DUNCAN and CORRIGAN, JJ., concur.

MATTHIAS, J., not participating.

ORDER OF THE SUPREME COURT OF OHIO DENYING REHEARING.

(April 29, 1970.)

It is ordered by the court that rehearing in this case is denied.

APPENDIX B.

MUTUAL EXHIBIT A.

Articles of Incorporation of The Servian Orthodox Church of Akron, Ohio, June 21, 1919.

A261 763

THESE ARTICLES OF INCORPORATION OF THE SERVIAN ORTHODOX CHURCH OF AKRON, OHIO.

WITNESSETH, That we, the undersigned,* a majority of whom are citizens of the State of Ohio, desiring to form a corporation, not for profit, under the general corporation laws of said State, do hereby certify:

FIRST. The name of said corporation shall be The Servian Orthodox Church of Akron, Ohio.

SECOND. Said corporation is to be located at Akron, in Summit County, Ohio, and its principal business there transacted.

THIRD. Said corporation is formed for the purpose of providing a place of worship for its members and conducting the same under suitable religious leadership according to the rules, regulations and customs of the Servian Orthodox Church; for promoting the cause of the Christian religion; for receiving, holding and disbersing gifts, bequests and funds from any source; for owning and maintaining suitable real estate and erecting and maintaining thereon suitable buildings, and also for maintaining a cemetery and for doing any and all things incident to the above.

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* "all" or "a majority."

IN WITNESS WHEREOF, We have hereunto set our hands, this 21st day of June, A.D. 1919.

Dushan Karadjich
Svetozar Hadnadjer
Geo Laziek
Aveta Ivkovich
Ivan Stokich

(Formal verification of signatures omitted in printing.)

DEFENDANTS' EXHIBIT DDD.

Letter, April 12, 1964, Gregory, West American Bishop, Firmilian, Middle Western Bishop and Stefan, Eastern American and Canadian Bishop to All Priests and Monks, All Church School Communities and All Serbs.

SERBIAN ORTHODOX CHURCH IN THE UNITED STATES OF AMERICA AND CANADA

E. No. 154/944 April 12, 1964

To all the Priests and Monks
To all Church-School Communities
To all Serbs throughout the United States of America and Canada, South America, and South Africa

The teaching of Christ the Saviour as well as the gifts of Grace of the Holy Spirit have been preserved as the greatest spiritual heritage in the Orthodox Church of Christ, of which our Serbian Orthodox Church of S. Sava is a part. By the alert and faithful safeguarding of that spiritual inheritance, the honor and dignity of the Serbian nation and its Church has been protected and kept intact

since the time of our forefathers; and, down to the present day, none has ventured to defile or even with a tiny shadow to darken the moral dignity of the Serbian name.

As in the days of greatness and glory so in the long days of slavery and suffering, the Serbian history knew only fighters, martyrs, and defenders of the Faith and Church, but never traitors, schismatics, and apostates. The fighting defense of these national sacred objects as well as of the eternal Christian truths has been transmitted from father to son, and from mother to daughter, thanks to the apostolic zeal, wisdom, and self-sacrifice of the Christian shepherds, priests, and bishops of our national Orthodox Church of St. Sava.

At one time, following the dictates of our conscience, we, together with our faithful priesthood of America and Canada, turned to you, our spiritual children, pointing out to you the unhealthy occurrence of apostasy and schism of a conscienceless Church hierarch, the former Bishop of the Middle-Western American (formerly American-Canadian) Diocese, who, spurred by his conceit, and seized by some non-canonical longings, abused his high status in the Church. He succeeded to seduce into apostasy and schism a small number of priests and insufficiently informed laymen, abusing the almost unlimited liberties granted by the countries of the United States of America and Canada.

For a long time, the jurisdictional ecclesiastical authorities, in their grief and embarrassment, avoided bringing into the open the unpleasant and scandalous misdeeds of their brother in Christ. However, after he had gone too far, a regular criminal proceeding was set up against him. At first, he was notified in a legal and canonical way, then he was summoned by his jurisdictional ecclesiastical authorities to answer questions. By that

time, he became totally conscienceless and, instead of acting in self-defense and penitence, he resorted to a dishonest and baseless defamation. He made charges publicly against all the hierarchs and against His Holiness the Patriarch, who are his jurisdictional judges, accusing them of being traitors, servants of the atheistic and communistic regime, heretics, schismatics, using still other derogatory names, as though thereby he could conceal and wash away his transgressions and proven inequities.

Because of all this, the Holy Episcopal Council, as the supreme judicial organ of the Serbian Orthodox Church, with a grievous heart, took into consideration these distressing occurrences, and by A.C. No. 1/Min. 38 of March 5, 1964, it unanimously passed its final judgment by which *Bishop Dionisije Milivojevich is penalized with divesture of his episcopal and monastic ranks, his name is removed from the roll of hierarchy of the Serbian Orthodox Church, and he is returned to the rank of layman under his secular name Dragoljub Milivojevich*, because of the following committed transgressions:

a) Conduct unbecoming to the priestly rank and status;

b) Non-performance, to-wit, neglect and performance of priestly duties and legal ordinances of his jurisdictional ecclesiastical authorities, and his criticisms of their ordinances and acts; and

c) Against the established Church order and for his schism.

DEAR SERBIAN BRETHREN.

There are no words which could express the grief and pain caused by a hierarch, who appeared today, against the background of the shining and pure history of the Serbian Orthodox Church of St. Sava, in such an undignified

manner, trampling upon his priestly oath. By his offenses and transgressions, he has created scandal among the people, and by his defamations and untruths, he has caused undeserved malignities to the Serbian Church and to her afflicted and suffering hierarchs—as the former Bishop Dionisije did, who is now Mr. Dragoljub Milivojevich.

In view of these reasons we are omitting our comment concerning this unique and first judgment of the Serbian hierarchs, who have been gathered together at their regular annual session of the Holy Episcopal Council of the Serbian Orthodox Church for this year. We are omitting it also because we do not want to injure the fresh and deep wounds inflicted by this first unworthy former Serbian hierarch Dionisije upon our entire ecclesiastical life in the United States of America and Canada.

Although we fully realize this and profoundly feel it still, simultaneously, we warily wonder, how it was possible that one single man, in spite of his oddities, his conceit, pride, and vain glory could lead astray and poison with hate individual men—not to mention his innumerable still more profound oddities which have not been included in this judgment. Indubitably, the time will come when a clear-cut answer will be supplied to this question. In the meantime, we temporarily console ourselves with the fact that Mr. Milivojevich gathered around himself a certain number of ardent adherents, so called "leaders," who never did belong to the Church and never did believe in what the Church preaches. Whenever an opportunity arose they abused the Church regarding it as a good and advantageous platform from which to pursue their own selfish and nefarious ends.

The fact is that Mr. Dragoljub Milivojevich has succeeded to a considerable measure in destroying many of

our ecclesiastical organizations, and to instigate strifes in them or in some other ways to frustrate normal activities in church communities with his recent proselytizing in our church communities. He has not ceased to be detrimental to our peaceful church order. Therefore, dear brethren, we hereby call upon you: to stop having confidence in and respect for that certain Mr. Dragoljub Milivojevich who since March 5, 1964, has nothing in common with the hierarchy of the Serbian Orthodox Church. He is not allowed to perform any kind of church service, either as a bishop or as a priest, nor to be garbed in ecclesiastical vestments because he is divested of all priestly and monastic distinctions. He cannot represent the Serbian Orthodox Church anywhere; he cannot speak nor undertake anything in her behalf.

As it is stated above, we do not wish to make any comment concerning the judgment of the Holy Council of Bishops, and for the sake of further information, a copy of the judgment of the Holy Council of Bishops of March 5, 1964, is being sent to you. From that judgment we have intentionally omitted certain paragraphs concerning moral improprieties of Mr. Dragoljub Milivojevich. We have regarded this omission as proper because of the indecent actions of Mr. Milivojevich. In the judgment these actions had to be described by indecent expressions, which could be regarded by some as scandalous, and, by the followers of other religions, as lowering of the dignity of our Church. It might have still other unpleasant consequences.

II.

As the former Bishop of the Middle East, Mr. Dragoljub Milivojevich by his pride and lack of conscience abused the normal criminal procedure and thwarted it with all means, in the first place by his malice. In order

to inflict the greatest possible malice and shame upon our Church—conjecturing what was coming to him—he held an illegal gathering at Libertyville, on November 12-14, 1963, which, contrary to all church regulations, "elected" Archimandrite Irinej Kovacevich as an "assistant bishop" to the former Bishop Dionisije, who at that time was already suspended from his espiscopal duties, and who was already indicted and forbidden to perform church ceremonies.

In order to heighten the malice and shame, the two of them found two Ukrainians who at Libertyville uncanonically "consecrated," on December 7, 1963, the illegally "elected Archimandrite Irinej Kovacevich." They did this only after they were turned away by the refusal of all Orthodox Churches and by all Orthodox hierarchs to perform this monstrous and uncanonical act of consecration.

Therefore, the Holy Episcopal Council of the Serbian Orthodox Church, at its regular session, took into its consideration the validity of that "election" and "consecration" of Archimandrite Irinej Kovacevich. It passed the additional resolution A. C. No. 2/Min. 37 of March 5, 1964, by which it pronounced these two acts—"election and consecration"—as illegal, null, and void.

III.

For the first time in our church history, the hierarchs of the Serbian Orthodox Church passed such a judgment about the former Bishop Dionisije and such a resolution about the non-elected and non-consecrated Irinej Kovacevich, two perniciously grave and painful documents. They had to pass them with regret and to pronounce them publicly not upon their own or somebody else's wish but according to the desire of the Founder of the Church, ac-

cording to the dogmas and canons of the Church in order to safeguard and protect for all time that which is sacred in Orthodoxy from unbounded arbitrariness of conceited and conscienceless individuals. It is an onerous duty; however, it is a duty entrusted upon their conscience and soul by the Saviour Himself and His Holy Apostles from the moment when they received the episcopal rank through the Apostolic succession. Nonperformance and betrayal of that duty on their part would be equal to the betrayal of Christ the Saviour and of His Church upon earth.

Separating and casting away such unbridled and conceited individuals without conscience until they sincerely repent, the Holy Episcopal Council of the Serbian Orthodox Church is turning to you, its faithful sons and daughters, addressing to you its Epistle A. C. No. 19/Min. 52 of March 7, 1964, a copy of which is here enclosed.

As balm and consolation to the sick, and as joyous and salutary tidings to those who lost their hope, let this inspired, truthful, and prayerful Epistle of the hierarchs of the Serbian Orthodox Church be a source of new spiritual power. With that spiritual strength you should forgive one another little offenses. Let your love toward Christ bring you closer together and unite you in His Church, which is one and indivisible. The Church is one body, and her head is Christ; therefore, one spirit should reign in her, and that is the spirit of Christ's love through all the ages and eternity.

We do not doubt that this paternal and solicitous message of the Serbian hierarchs—if you receive it with pure thoughts and heart—will strengthen the faith in the faint-hearted, offer hope to the irresolute, destroy the hatred in the malevolent and bring the reign of love in all of you. We beg you all, as our spiritual brethren and children, and we especially emphasize: Do not forget that,

being martyred, they entreat you "by the living God, by the Serbian St. Sava, as well as by the graves of your forefathers, to remain faithful to the Church of your predecessors." They neither ask nor expect anything else from you. They assure you that "the Mother Church is in her prayers always with you." As parents to their faithful children, they enjoin you: *"Love Your Church. Love Your New Fatherland."*

The peace of our Lord Jesus Christ and the Grace of the Holy Spirit be with you all now and forever.

Your supplicants in the Lord:

Gregory — West American Bishop

Firmilian — Middle Western Bishop

Stefan — Eastern American and Canadian Bishop

JUDGMENT OF THE HOLY EPISCOPAL COUNCIL OF THE SERBIAN ORTHODOX CHURCH, WITHIN WHOSE JURISDICTION IT IS TO JUDGE THE OFFENSES OF BISHOP DIONISIJE MILIVOJEVICH, WHO IS INDICTED BY VASILIJE, BISHOP OF ZICA, IN HIS OFFICIAL CAPACITY AS THE PROSECUTOR OF THE SERBIAN ORTHODOX CHURCH

The Following sat in Judgment:

German, Serbian Patriarch, Presiding

Members:

Damaskin, Metropolitan of Zagreb

Nektarije, Metropolitan of Dabro-Bosnia

Danilo, Metropolitan of Montenegro and the Coastal Region

Emilijan, Bishop of Timok

Jovan, Bishop of Nis

Valerijan, Bishop of Sumadija

Makarije, Bishop of Srem

Nikanor, Bishop of Backa
Vasilije, Bishop of Zica
Hrizostom, Bishop of Branicevo
Visarion, Bishop of Banat
Emilijan, Bishop of Slavonia
Longin, Bishop of Zvornik-Tuzla
Simeo, Bishop of Gornji Karlovac
Vladislav, Bishop of Zahum-Hercegovina
Pavle, Bishop of Ras-Prizren
Andrej, Bishop of Banja Luka
Stefan, Bishop of Dalmatia
Jovan, Bishop of Sabac-Valjevo

I.

The prosecutor of the Serbian Orthodox Church, with his indictment of October 16th, 1963, together with a supplement to the indictment of March 5th, 1964, indicted Bishop Dionisije Milivojevich for the following ecclesiastical-canonical transgressions:

For breaking his episcopal oath and for refusing to submit to the decisions of the highest Church authorities —the Holy Episcopal Council and Synod of the Serbian Orthodox Church;

For his refusal to participate orally and directly in an investigation before the Investigating Committee of the Holy Episcopal Synod, concerning the charges submitted against him;

For officiating in Church ceremonies and for performing the duties of diocesan bishop after having been indicted and suspended from the performance of Church ceremonies, and relieved of the duties of the diocesan bishop;

For accepting clerics who had no canonical release, as well as persons who were under suspension from the

performance of Church ceremonies, and for entrusting them with parochial duties;

For committing wrong-doings of a material nature and for conducting himself in a manner unbecoming priestly rank and position;

For ordaining and bestowing ecclesiastical ranks of honor on such persons who, according to the canons do not possess the necessary qualifications for ordination; and

For proclaiming the Serbian Orthodox Diocese of America and Canada fully autonomous and separating it from the mother, Serbian Orthodox Church, at the so-called "Church National Assembly," held November 13th and 14th, 1963.

For these offenses, the prosecutor, for the Serbian Orthodox Church asked that Bishop Dionisije Milivojevich be divested of both his episcopal and monastic ranks.

II.

Upon hearing the indictment of the prosecutor for the Serbian Orthodox Church, submitted against Bishop Dionisije Milivojevich, and upon study of all documents related to this criminal case, and upon completion of the presentation of evidence—on the basis of Clause 6 of the II Ecumenical Council; Clauses 14 and 15 of the Antiochian Council; Clause 12 of the Council of Carthage; Articles 7 and 69, Points 27/B and 214a, Points 1, 2, 3 and 6 of the Constitution of the Serbian Orthodox Church and paragraphs 1, 2, 9, and 12 of the Constitution of the Serbian Orthodox Diocese of the United States of America and Canada, the Holy Episcopal Council of the Serbian Orthodox Church, as the judicial organ—

ADJUDGES

Bishop Dionisije Milivojevich of Libertyville, U.S.A., born on July 13/26 at Rabrovac, near Palanka of

Smederevo, Yugoslavia; elected bishop on June 9/22, 1938; consecrated August 8/21, 1938; appointed by the decree of the Holy Episcopal Council of the Serbian Orthodox Church, EC No. 218/Min. 81 of December 8th, 1939, as the Bishop of the Serbian Orthodox Diocese of America and Canada, with no previous conviction, be punished *by divestiture of his episcopal and monastic ranks* (Article 216, Points 8 and 10 of the Constitution of the Serbian Orthodox Church), and be removed from the roll of the hierarchy of the Serbian Orthodox Church, and be returned to the status of layman, under his secular name, Dragoljub Milivojevich, in consequence of his committed offenses:

a. Conduct unbecoming to the clerical rank and position, (42 Apostolic Canon; Constitution of the Serbian Orthodox Church, Article 214, Point 2; Regulations and Procedures for the Ecclesiastical Courts of the Serbian Orthodox Church (Criminal Code), Articles 22, 25, and 29).

b. Non-performance, that is to say, negligent performance of official priestly duties and legal ordinances of the superior ecclesiastical authorities, discussion and criticism of their orders and procedures,

(Apostolic Canon 74; Constitution of the Serbian Orthodox Church, Article 214, Points 3 and 6, and Regulations and Procedures for the Ecclesiastical Court of the Serbian Orthodox Church (Criminal Code), Article 30, Points 9, 32, and 38).

and *c. Against the established order of the Church and for schism.*

(Apostolic Canons 25, 34, 35, and 74; Council of Trulo, 17; Constitution of the Serbian Orthodox Church, Article 214, Point 1; Regulations and Procedures for the Ecclesias-

tical Court of the Serbian Orthodox Church (Criminal Code), Articles 10, 15, 17, 18, and 45).

VIII.

The Court Prosecutor of the Serbian Orthodox Church during the adjudication of the offenses of Bishop Dionisije, requested that the Holy Episcopal Council permit him to extend his indictment of the 16th of October, 1963, to include the offenses of Bishop Dionisije committed on the 13th and 14th of November, 1963, at the so-called X Church National Council in Libertyville. These offenses came with the creation and declaration of the Serbian Orthodox Diocese of the United States of America as a diocese completely autonomous and separate from the Serbian Orthodox Church. They arise also from his granting consent to create a non-canonical hierarchy outside the jurisdiction of the Serbian Orthodox Church, in this way creating a schism in Her, through the non-canonical election of Archimandrite Irinej Kovacevich as bishop at an illegal Church National Council, and later through his consecration.

The Holy Episcopal Council of the Serbian Orthodox Church accepted this request of the Court Prosecutor and punished Bishop Dionisije for these offenses.

The supplementary portion of the indictment was not sent to the accused Bishop Dionisije, because with his Act of the 25th of January, 1964, he returned the indictment of the Court Prosecutor dated the 16th of October, refused to answer it and refused to participate in further proceedings concerning his offenses. He did this because the Holy Episcopal Synod, by its decision No. 3676/Min. 647, of the 10th of December, 1963, was unable to extend the time limit for writing an answer to the indictment to six months. According to the canons (Regulation 19 of the

Council of Carthage), the time limit in an ordinary case is one month and in a special case, two months. According to the Regulations and Procedures for the Ecclesiastical Courts of the Serbian Orthodox Church (Article 70), the time limit is only 14 day. The indicted Bishop Dionisije benefited from a two month time limit, and did not answer the indictment, that is to say, he answered that he will not answer.

The Holy Episcopal Synod of the Serbian Orthodox Church, by its Act of the 25th of February, 1964, Syn. No. 357/Min. 78, informed the Holy Episcopal Council of the Serbian Orthodox Church that regarding the confirmed gravity of the offenses committed by Bishop Dionisije Milivojevich, it considers itself as having exhausted its authority as provided in Article 70, Point 35, of the Constitution of the Serbian Orthodox Church. Therefore, it brings the entire criminal case of the indicted Bishop Dionisije before the Holy Episcopal Council with the recommendation that the Holy Episcopal Council bring forth a final judgment on it on the basis of Clause 6 of the Second Ecumenical Council; Clauses 14 and 15 of the Council of Antioch; Clause 12 of the Council of Carthage; Articles 7 and 69, Point 27/B of the Constitution of the Serbian Orthodox Church. The procedure for judgment of a bishop is not sufficiently explained in our positive Church legislation and this procedure is sufficiently expounded in the canons of the Orthodox Church cited above.

The Holy Episcopal Council accepted this recommendation of the Holy Episcopal Synod, and on the basis of Clause 6 of the Second Ecumenical Council; Clauses 14 and 15 of the Council of Antioch; Clause 12 of the Council of Carthage and Articles 7 and 69, Point 27/B of the Constitution of the Serbian Orthodox Church, as the

ecclesiastical organ, pronounced the final judgment concerning the offenses of Bishop Dionisije, as stated in the body of the judgment.

X.

Being that this judgment was pronounced unanimously by all the members of the Holy Episcopal Council of the Serbian Orthodox Church, therefore, according to the 15th Clause of the Council of Antioch, it is final, and there is no appeal.

From the Meeting of the Holy Episcopal Council of the Serbian Orthodox Church, on the 15th of March, 1964, in Belgrade, EC. No. 1/Min. 38.

President
Holy Episcopal Council
Serbian Patriarch
GERMAN

SEAL

(List of members omitted.)

THE HOLY EPISCOPAL COUNCIL OF THE
SERBIAN ORTHODOX CHURCH

To all the priesthood and faithful of the Serbian Orthodox Church in the United States of America and Canada

Our dear brothers and sisters:

The dramatic course of events in our diocese in the United States of America and Canada has prompted us to address you again with a conciliar epistle. The mother Church is again sending a message to her children living in a distant world. In her turbulent history, she has become accustomed to be solicitous and worried, and to follow closely with a watchful eye, the life of her children living by the fireside at home as well as of those who live far away from her. We are greatly agitated by the

ecclesiastical schism which has set in among you. We are profoundly distressed by the discord which arose among brothers, and by the intolerance, and strife existing in some of your church communities, in your homes and in your inter-relations. At its regular session this year, the Holy Episcopal Council has for the third time taken into consideration with anxiety your existing ecclesiastical conditions. With complete awareness of its responsibility before God, before the Serbian St. Sava, and before our history, your patrimonial bishops, headed by the Patriarch, took into their deliberations the ecclesiastical schism over there, for which your former Bishop Dionisije is most culpable. Commissioned and authorized by Christ the Savious and by the Holy Apostles, the Holy Church indicted him and adjudged him. The holy canons prescribe the severest penalty, which is excommunication from the Church community for every believer and priest, and especially for a bishop, who violates a Church order, creates schism or heresy. The Holy Episcopal Council did not excommunicate the condemned former Bishop Dionisije, but it divested him of the episcopal order and returned him to the rank of layman. Thereby, the Church gave him a chance to repent and to entreat God's mercy for his multitudinous personal and canonical transgressions, as well as for the wounds he inflicted upon the saintly organism of the Church of St. Sava, before he faces the tribunal of the Eternal Judge.

With grief and feeling of shame, the Mother Church for years listened about the life and activities of your former bishop. At the time when the dioceses of other national Churches in the New World were showing progress from day to day, and were gaining greater and greater influence and reputation, we were blushing before them because of the personal life and violations of the

holy canons on the part of your former brother in Christ. The Holy Episcopal Council was constrained by the regulations of the holy canons to penalize the culprit severely. A gravely afflicted organ is removed from the saintly organism of the Church. For according to the Grace of God, the Church is not only the physician of sick souls, but a physician of her own organism as well.

We realize, our dear spiritual children, that our judgment is not common. It is not recalled that in our Holy Church a bishop was ever defrocked. But neither has our history ever recalled that a bishop apostatized from his Mother Church and from Holy Orthodoxy. And your former bishop did just that. He stepped out of our Church community with a group of misled children of St. Sava. He inflicted a grevious wound upon the organism of our martyred Church, a moral blow unknown in our Church history. By an illegal and anomalous election, followed by a non-canonical consecration, the so-called assistant bishop, he apostatized not only from his own Church but from the Holy Community of all Orthodox Churches as well. The consecration of his so-called assistant bishop was performed by the outcast and unrecognized self-called bishops of a non-canonical (Ukranian) Church. By this act, his schismatic religious community apostatized not only from Serbian Orthodoxy but from the One, Holy Ecumenical and Apostolic Church of Christ. What did not happen in our Church in times of slavery, nor at the time when our multitudinous enemies planned the splitting of the Church of St. Sava, happened in our days. The enemy trampled on our hearths, ridiculed our saints but could not destroy the spiritual unity of the Serbian nation.

Throughout the centuries of her existence to our days, the Serbian Church has enjoyed respect in the great family

of Orthodox Churches. Our St. Sava was not only the first heirarch of the Serbian Church, but also one of the most distinguished, if not even the most distinguished First Heirarch of his time. Our Archbishops and Patriarchs, our bishops and priests were the fearless guardians—guardians of St. Sava's Orthodoxy both in good and evil times. Many of them enriched our history with their glorious names, and our Serbian calendar with priestly martyrs. In our history, there frequently occurred situations in which everything was wagered and sometimes everything was lost, except the soul, the faith and the face. The precious bequests of the forefathers were never betrayed, the Church of St. Sava was never renounced. Therefore, our dear spiritual children, our Holy Episcopal Council had to condemn severely the renegade activity of its one former member.

Dear children of the Serbian St. Sava! Your Mother Church calls upon you at this decisive hour in the history of our Church, to preserve together with us our spiritual community, our Church unity. Let us stay in the unity of faith, hope and love, as well as in all Christian virtues, which through the ages served as adornments of the Serbian soul. Our Church of St. Sava and our Orthodox Faith have been the most beautiful embellishments of our great history. The sense of care with which St. Sava cherished his nation; as a monk at Hilendar, as an ascetic at Karea, as the First Heirarch on the Archbishop's Throne—that sense of care has been passed on to his Church. Therefore, she is St. Sava's in spirit, in her origin, in her patriotism, and she is never in doubt concerning her fidelity to Ecumenical Orthodoxy. It is the duty of every Serbian to honor these features of his holy Church. Primarily, it is our duty—the duty of your Patriarch and the rest of the bishops.

It would be superfluous to assure you how great the care of the Mother Church is for her children in the distant world. That care has been manifested also in our decision to establish for you three dioceses instead of one: For North and South America, South Africa and Canada. Instead of one flame which was rapidly extinguishing let three torches now shine, three bulwarks of Serbian Orthodoxy in the vast spaciousness of the New World. It is our paternal desire that our Serbian people there should possess as strong a Church organizations as possible. The Church is your only guarantee of a spiritual and national existence.

Sending you this epistle, this fatherly message of your Old Country bishops headed by our Patriarch, we ask you dear brothers and sisters with both mind and heart. We call upon you to remain faithful to your Mother Church, who cares for you from your ancient firesides. Line up around your hierarchs: The Right Rev. Bishops Stefan, Firmilian and Gregory. Assist your bishops and their priests in their efforts to promote the life of the Holy Church and to recover the desirable peace and unity. Forgive one another and extend the hand of reconciliation. Let peace, confidence and good will prevail again in your hearts, in your homes and in your Church communities. That, united in your Holy Church, you may always rejoice in the celebration of our Christmas, our Easter, our St. Sava and of all Christian holidays. That in peace you may meet and visit with each other. Let the fatal Serbian discord disappear which many times in the past, deprived our people of spiritual peace and thwarted many successes. Do not be taken in by those who hunt in darkness. Don't believe them when they say that the Mother Church has the intention to take away your rights and to abolish your institutions. Don't take to your hearts the words

and messages of those who base their existence upon ficticious, non-existent facts. Avoid those who with a design invent hostile untruths about the Mother Church and her alleged and obscure aims and plans. Take precaution against those who use the Church as a good ambush for their personal designs and selfish aims. With concerted efforts, do everything you can that our three diocese in the United States of America and Canada become three faithful branches on the stem of St. Sava. Love your Church and your New Homeland—America. Be her diligent and correct citizens. These are our desires, this is our message to our dear children in the distant world.

Physically we are far apart but we are one in spirit and we are always together in the love of Christ. The farther a child is from its parent, the closer it is to his heart. Throughout history, our Holy Church has always followed her children in their footsteps with her care and love, whether on highways or by-ways, whether in good or evil, in times of peace and tranquility as well as in times of grief and suffering, perdition and annihilation.

We entreat you by the living God and by the Serbian Orthodox Saint Sava, as by the graves of your forefathers to remain in the Church of your ancestors. Don't be misled. Don't be beguiled by the enemies of our Church unity. Your Mother Church is with you constantly in her prayers. We pray for you before the throne of God, before the sarcophagus with relics of the Holy Serbian bishops and patriarchs, before the sarcophagus of St. Steven the First-Crowned, St. Steven King of Dechani, St. Lazar of Kossovo, St. Vasilije of Ostrog, St. Peter of Cetinje and of all the Serbians Saints, as well as on the graves of our known and unknown forefathers, martyrs of the cross and liberty, who consecrated our land and glorified their names with their blood.

Your Patriarch and all your bishops in the Old Country greet you and bless you.

Belgrade, March 7, 1964

GERMAN
Archbishop of Pec,
Metropolitan of Belgrade-
Karlovci and Serbian Patriarch

(Attached letter and list of members omitted.)

PLAINTIFF'S EXHIBIT 23-B.

Resolutions of the St. Demetrius Church Congregation in Akron, Ohio.

The membership of the St. Demetrius Church Congregation in Akron, Ohio in the United States of America, assembled at the Special Assembly held July 7, 1963 and considering the serious events taking place in the life of the Serbian Church in Akron and in America, approves the following

RESOLUTIONS.

1. The membership considers that the Church—canonical ties between Serbian Orthodox Church in America and Canada and the Serbian pahriarchate in Belgrade shall and must be maintained in order to secure dogmatic and canonical unity and to maintain, for the future the only, indivisable and autocephalous Serbian Orthodox Church (Article 1 of the Constitution of the Serbian Church).

2. The membership furthermore believes that, in the spirit of Article 13 of the Constitution of the Serbian Orthodox Church and of the Article 3 of the Constitution

of the Serbian Orthodox Diocese for the United States of America and Canada. The Serbian Orthodox Diocese in America and Canada must enjoy full administrative freedom in the future, in order to be able to govern its affairs independently and by itself.

3. The membership considers that, the polotical structural of Yugoslavia with the Communistic system of Josip Broz—Teto make impossible free and independent work of the Serbian Church in that country and forces all Church ecclisiastical and administrative authority to a unconditional submissiveness and to unvolentary cooperation with the godless Communism.

4. In connection with this the membership believes that the last decisions of the Holy Synod and the Holy Assembly of the bishops relative to the division of the Serbian Orthodox Diocese in America and Canada and to the suspension of the Bishop Dionisija of Politicaly inspired. This seems to be more evident because of the fact that the decision relative to the division of the Diocese was decreed at the same time when the head of the Serbian Church in America, His Grace Bishop Dionisija was legally deprived any opportunity to represent the Serbian people in America and Canada who he represents for the past 23 years.

5. The political background of these decisions from Belgrade were specifically emphasized by the factor that the Very Rev. Stevan Lastavica was elected to be a new Bishop; a man totally completely unknown to the Serbian people in America and Canada; a man with no merit for the Serbian Church in this great lands and a man whose past does not allow such high up ranking.

6. In a clear difference of opinion and in many groupings which took place after this important decision of our

Holy Fathers from Belgrade were taken our membership forsees a very serious danger for our Holy Church in America and Canada and is afraid that the final resolves of these unjustified decisions may be very unpleasant for the future life and work of our church.

In regard to this we hereby issue an appeal to all reasonable Serbs, both priest and laymen, to always consider our example in Akron and to gain wisdom from our experience.

7. Finally, the membership considers that the case of his Grace Bishop Dionisija should and must be considered the way he, Bishop Dionisija has publically proposed.

The way by which his case was announced in the American community clearly demonstrates the political background of that decision and, judged by our ideal of freedom, represents a political liquidation equalling a political crime.

As long as the case of His Grace Bishop Dionisija is not justly resolved the membership of the Church School congregation of the St. Demetrius Church in Akron consider, in regard to Article 5 of the constitution of the Serbian Orthodox Diocese of the United States of America and Canada, the Diocisan counsel (Plenum) as the only legal authority and declare itself hereby to accept and carry out the decision of that counsel.

July 7, 1963
President
Albert Davis

In Akron, Ohio USA
Secretary
Vlajko Jovic

DEFENDANTS' EXHIBIT Q-1.

Judgment of the Holy Episcopal Council of the Serbian Orthodox Church Within Whose Jurisdiction It Is to Judge the Offenses of Bishop Dionisije Milivojevich, Who Is Indicted by Vasilije, Bishop of Zica, in His Official Capacity as the Prosecutor of the Serbian Orthodox Church.

The Following Sat in Judgment:

German, Serbian Patriarch, Presiding
Members:
Damaskin, Metropolitan of Zagreb
Nektarije, Metropolitan of Dabro-Bosnia
Danilo, Metropolitan of Montenegro and the Coastal Region
Emilijan, Bishop of Timok
Jovan, Bishop of Nis
Valerijan, Bishop of Sumadija
Makarije, Bishop of Srem
Nikanor, Bishop of Backa
Vasilije, Bishop of Zica
Hrizostom, Bishop of Branicevo
Visarion, Bishop of Banat
Emilijan, Bishop of Slavonia
Longin, Bishop of Zvornik-Tuzla
Simeo, Bishop of Gornji Karlovac
Vladislav, Bishop of Zahum-Hercagovina
Pavle, Bishop of Ras-Prizren
Andrej, Bishop of Banja Luka
Stefan, Bishop of Dalmatia
Jovan, Bishop of Sabac-Valjevo

I.

The prosecutor of the Serbian Orthodox Church, with his indictment of October 16th, 1963, together with a supplement to the indictment, of March 5th, 1964, indicted Bishop Dionisije Milivojevich for the following ecclesiasti-

cal-canonical transgressions:

For breaking his episcopal oath and for refusing to submit to the decisions of the highest Church authorities—the Holy Episcopal Council and Synod of the Serbian Orthodox Church;

For his refusal to participate orally and directly in an investigation before the Investigating Committee of the Holy Episcopal Synod, concerning the charges submitted against him;

For officiating in Church ceremonies and for performing the duties of diocesan bishop after having been indicted and suspended from the performance of Church ceremonies, and relelved of the duties of diocesan bishop;

For accepting clerics who had no canonical release, as well as persons who were under suspension from the performance of Church ceremonies, and for entrusting them with parochial duties;

For committing wrong-doings of a material nature and for conducting himself in a manner unbecoming priestly rank and position;

For ordaining and bestowing ecclesiastical ranks of honor on such persons who, according to the canons do not possess the necessary qualifications for ordination; and

For proclaiming the Serbian Orthodox Diocese of America and Canada fully autonomous and separating it from the mother, Serbian Orthodox Church, at the so-called "Church National Assembly," held November 13th and 14th, 1963.

For these offenses, the prosecutor for the Serbian Orthodox Church asked that Bishop Dionisije Milivojevich be divested of both his episcopal and monastic ranks.

II.

Upon hearing the indictment of the prosecutor for

the Serbian Orthodox Church, submitted against Bishop Dionisije Milivojevich, and upon study of all documents related to this criminal case, and upon completion of the presentation of evidence—on the basis of Clause 6 of the II Ecumenical Council; Clauses 14 and 15 of the Antiochian Council; Clause 12 of the Council of Carthage; Articles 7 and 69, Points 27/B and 214a, Points 1, 2, 3, and 6 of the Constitution of the Serbian Orthodox Church and paragraphs 1, 2, 9, and 12 of the Constitution of the Serbian Orthodox Diocese of the United States of America and Canada, the Holy Episcopal Council of the Serbian Orthodox Church, as the judicial organ—

ADJUDGES

Bishop Dionisije Milivojevich of Libertyville, U.S.A., born on July 13/26 at Rabrovac, near Palanka of Smederevo, Yugoslavia; elected bishop on June 9/22, 1938; consecrated August 8/21, 1938; appointed by the decree of the Holy Episcopal Council of the Serbian Orthodox Church, EC No. 218/Min. 81 of December 8th, 1939, as the Bishop of the Serbian Orthodox Diocese of America and Canada, with no previous conviction, be punished *by divestiture of his episcopal and monastic ranks* (Article 216, Points 8 and 10 of the Constitution of the Serbian Orthodox Church), and be removed from the roll of the heirarchy of the Serbian Orthodox Church, and be returned to the status of layman, under his secular name, Dragoljub Milivojevich, in consequence of his committed offenses:

a. Conduct unbecoming to the clerical rank and position, (42 Apostolic Canon; Constitution of the Serbian Orthodox Church, Article 214, Point 2; Regulations and Procedures for the Ecclesiastical Courts of the Serbian Orthodox Church (Criminal Code), Articles 22, 25, and 29).

b. Non-performance, that is to say, negligent performance of official priestly duties and legal ordinances of the superior ecclesiastical authorities, discussion and criticism of their orders and procedures,

(Apostolic Canon 74; Constitution of the Serbian Orthodox Church, Article 214, Points 3 and 6, and Regulations and Procedures for the Ecclesiastical Court of the Serbian Orthodox Church (Criminal Code), Article 30, Points 9, 32, and 38).

and *c. Against the established order of the Church and for schism.*

(Apostolic Canons 25, 34, 35, and 74; Council of Trulo, 17; Constitution of the Serbian Orthodox Church, Article 214, Point 1; Regulations and Procedures for the Ecclesiastical Court of the Serbian Orthodox Church (Criminal Code), Articles 10, 15, 17, 18 and 45).

DOCUMENTATION.

Accusations against Bishop Dionisije Milivojevich, made by the clergy and faithful of the Diocese of America and Canada, have been arriving for years at the offices of the Holy Episcopal Synod of the Serbian Orthodox Church, the Patriarch and individual bishops. All these accusations mainly stated that Bishop Dionisije either lives a life unbecoming his rank and position or that Bishop Dionisije is engaged in various secular transactions which are not permitted by Church canons, such as buying and selling of houses, properties and land parcels. In order to examine the justification of these charges against Bishop Dionisije Milivojevich, the Holy Episcopal Council of the Serbian Orthodox Church, by its decision EC No. 19/Min. 50, 1962, recommended to the Holy Episcopal Synod of the Serbian Orthodox Church to send a delegation to the United States of America to investigate, among other

things, these accusations against Bishop Dionisije. The Holy Episcopal Synod proceeded according to this recommendation and, after having given them the necessary instructions, appointed the Metropolitan of Zagreb, Damaskin, and the Bishop of Backa, Nikanor, to visit the American Canadian Diocese. They remained in this visit from September 13th to November 29th, 1962, and during that time, they visited Bishop Dionisije and a great number of the Serbian Orthodox parishes and Church congregations, and they came into contact with many of the priests and faithful of the American-Canadian Diocese. By the oral and written reports submitted to the Holy Episcopal Council of the Serbian Orthodox Church by the Metropolitan of Zagreb, Damaskin, and the Bishop of Backa, Nikanor, it is seen that the accusations against Bishop Dionisije Milivojevich were well-founded, and that they were reiterated by the priests and the faithful at public meetings of the priests and the faithful, either in writing or orally, either in the presence of Bishop Dionisije or the delegation itself. That is why the Holy Episcopal Council of the Serbian Orthodox Church, at its meeting of May 10th, 1963, by EC Nos. 20 and 21/Min. 77, ordered the Holy Synod of the Serbian Orthodox Church to institute criminal court proceedings against Bishop Dionisije Milivojevich. The Holy Episcopal Synod of the Serbian Orthodox Church proceeded according to this order of the Holy Episcopal Council, and by its decision Syn. No. 1664/Min. 188, of May 10th, 1963, it indicted Bishop Dionisije Milivojevich and suspended him from the performance of priestly ceremonies with a reduction in his remunerations, until the judgment of the jurisdictional court. The Holy Episcopal Synod, by its decision Syn No. 1986/Min. 265, of July 13th, 1963, then sent the Bishop of Branicevo, Hrizostom, and the Bishop of Banat, Visarion,

to the United States of America for the purpose of investigating the offenses of Bishop Dionisije. As court investigators they were to examine the criminal responsibility of Bishop Dionisije, on the basis of the charges presented. They were also to collect evidence and hear Bishop Dionisije and witnesses, and upon completion of the investigative procedure, they were to turn the entire record of the criminal case of Bishop Dionisije over to the Holy Episcopal Synod of the Serbian Orthodox Church, along with their report and recommendations. The court investigators, Bishop of Branicevo, Hrizostom, and Bishop of Banat, Visarion, proceeded according to the decision of the Holy Episcopal Synod, traveled to the United States of America, met with Bishop Dionisije Milivojevich on July 5th, 1963, not in the bishop's residence, but according to his wish, in a public place. They recorded his statement in the minutes of their meeting, which Bishop Dionisije later would not sign, even though he participated in their constitution. During this meeting and hearing, Bishop Dionisije declared: that he will not answer one oral question, but wishes that all questions be put to him in writing; that he does not recognize the decision of the Holy Episcopal Council concerning the division of this diocese into three parts; that, according to this decision, he does not consider himself the bishop of the Middle-Western American Diocese, and that he stands behind all his circulars and announcements, made both before and after receipt of the decisions of the Council and Synod. Because of the fact that Bishop Dionisije refused to participate orally and directly in the investigation of his offenses, the Investigating Committee continued its work of collecting material evidence of his offenses, and recommended to the Holy Episcopal Synod of the Serbian Orthodox Church to call the Holy Episcopal Council of

the Serbian Orthodox Church into special session, therein to elect as bishops, the Archimandrites: Firmilian Ocokoljic and Gregory Udicki. The Holy Episcopal Synod accepted the recommendation of the investigating Committee and called the Holy Episcopal Council into special session on July 26th, 1963. At this session, the Holy Episcopal Council, at its meeting of July 27th, 1963, under EC No. 42/Min. 2, determined that Bishop Dionisije Milivojevich trampled his episcopal oath, renounced obedience to his Church authority, and thereby lost the qualifications prescribed in Article 104, Constitution of the Serbian Orthodox Church, for the position of diocesan bishop. Therefore it releived him of the duties of diocesan bishop and declared his Middle-Western American Diocese vacant. When it had accomplished its work, the Investigating Committee returned to (our) land and submitted its report concerning what had been done and concerning the gathering of material evidence of the offenses of Bishop Dionisije Milivojevich.

III.

Evidence against Bishop Dionisije Milivojevich for the offense—a) Conduct not becoming the priestly rank and position:

1. Dushan Popovich, parish priest of Chicago, asserts: that when he entered the United States of America, that is to say Chicago, he noticed with great surprise, that there reigned among the people there a very bad opinion about Bishop Dionisije; that it is being openly said that Bishop Dionisije has relations with Milka Suka of Libertyville, and that he read a letter of Protopriest Milan Rakich of St. Louis, stating that one day, Bishop Dionisije made rude advances toward his parishioner Ann, who had brought her children to the children's camp at Shadeland;

2. Ljubisav Djurich, priest of St. Paul, Minnesota, asserts: that Bishop Dionisije annoyed many women; that on the eve of Pentecost, 1953, he took him to a hotel to sleep; that at that time, Bishop Dionisije requested that he find him a young woman, but only the kind that can keep a secret, and that he had then said he cannot live without women;

3. Vladimir Milinkovich, priest of Indianapolis, asserts: that Bishop Dionisije asked him and his wife, Ljubica, on April 5th, 1962, about his parishioner Evelyn Petrovich, and requested that they talk her into going to California with him, for it would not be "bad" for her if she did;

4. Stevan Prostran, Protopriest of Joliet, Illinois, asserts: that the relationship of Bishop Dionisije towards the female set falls in (the category) of sexual criminality; that Bishop Dionisije once said to his daughter-in-law: you know, my lady, my backside has become so hardened that it no longer feels blows; and that his parishioner, Mile Radakovich, former president of the Serbian National Federation, complained that Bishop Dionisije made advances toward his daughter Mary;

5. Dr. Dushan Silasky, attorney, former legal counsel for the diocese, wrote in the newspaper "Jedinstvo" (Unity.); that Bishop Dionisije is the most unworthy and shameless personality that ever held the position of diocesan bishop in the history of the Serbian Orthodox Church; that the business transactions of Bishop Dionisije have become intolerable and that they have no connection with Church matters; that it cannot be expected that the bishop's intrusions on the sanctity of the family institution, his unceasing caressing of women and girls will forever remain under cover, un-noticed and concealed;

6. Slavoljub Radovich, a former officer of the King's Guard, of Chicago, asserts: that he saw a happy and laughing Bishop Dionisije in the saloon of Sreten Gajich of Chicago; that in the presence of Mrs. Gajich, he flirted with Mrs. Dimitrijevich, touched her with his hands about the face and back; that he met with Mrs. Dimitrijevich in the Gajich home; that he committed many disgraceful and shameful acts with the female set, among which is included his public scandal with Miss Rada Milentijevich. She came as a student from Yugoslavia to America to be married, but this was spoiled by Bishop Dionisije; that Bishop Dionisije bought an automobile for Rada Milentijevich and gave her money to open a hotel in Paris;

7. Stoyanka, the wife of the priest Radoslav Kovacevich, of Indiana Harbor, asserts: that on November 14th, 1960, Bishop Dionisije squeezed her hand; gazed at her with a fixed look; told her not to bear so many children, that there exist means against conception, and described the methods of their use;

8. Stoyan Lazarevich, a musicologist of Chicago, asserts: that he saw Miss Rada Milentijevich sojourning at the Monastery of St. Sava, Libertyville, and that she had a new car which, it is asserted, was bought for her by Bishop Dionisije;

9. Mary Drit of Springboro, asserts: that she is the first neighbor to the Church property at Shadeland; that she visited Bishop Dionisije and met him on August 12th, 1951; that a day or two later, without any notice, he payed her a visit; that during this visit he had made amorous approaches to her which shocked her, and that he then tried to molest her, but that she succeeded in resisting and escaped from her home;

10. Protopriest Emilijan Glocar, parish priest of

Akron, asserts: that Bishop Dionisije made advances toward his wife, Bosiljka; that she complained, and that she was ashamed at what the bishop was attempting prior to a worship service, and pleaded with him not to leave her along with Bishop Dionisije;

11. Dushan Popovich, parish priest of Chicago, asserts: that Bishop Dionisije bought and sold houses and properties, and that when he bought the Church property at Shadeland, he first bought it on his name, then later sold it to the American-Canadian Diocese;

12. On June 8th, 1962, the Association of Theologians of America, in their presentations, directed to the Patriarch, assert: that Bishop Dionisije bought the Church property at Shadeland for himself, then later sold it to the American-Canadian Diocese for a far greater sum.

IV.

Evidence against Bishop Dionisije for the offense—b) Non-performance, that is to say, negligent performance of official priestly duties and legal ordinances of the superior ecclasiastical authorities, discussion and criticism of their orders and procedures;

1. The newspaper, "Free Expressions," in 1944 announced that Bishop Dionisije, in opposition to canon law, decorated Protosingelos Danilo Kozomora, parish priest of Clairton with the rank of Archimandrite, even though he knew that he, as a monk, contracted a marriage and transgressed the monastic vow of chastity;

2. From the statement of Abbot Mitrofan Kresojevich, parish priest of Cincinnati, it is seen that Abbot Mitrofan was convicted by the civil court in Arizona on the 1st of December, 1953, as a homosexual. But this did

not prevent Bishop Dionisije, three months later, from promoting him first to the rank of Protosingelos and then Abbot, and giving him a parish, even though according to canon law, he was not allowed to do this;

3. Protopriest Milan Brkich, parish priest of Milwaukee, asserts: that Bishop Dionisije, in opposition to canon law, ordained Dushan Vavich, a graduate seminarian, even though he warned him before the ordination that Dushan Vavich is an epileptic and that he is under court investigation for arranging a tryst with an eleven year old girl;

4. Raja Milinkovich of Lackawanna, asserts: that Bishop Dionisije ate lamb and drank hot whiskey early in the morning of the day of St. Mother Angelina, the 12th of August, 1957 or 1958, and that he served the Divine Liturgy that day;

5. The president and members of the Auditing Committee: Milan Radakovich, I. Bulatovich, Pavle Jerich, and Milan Zunich, assert: that they had determined at the time of the examination of the financial accounts of Shadeland, that 51 duplicate receipts were missing for the period from December 4th, 1961, to October 18th, 1962, when Bishop Dionisije personally managed the property; that the property is in debt and that the debt continually rises. On January 1st, 1962, it was $20,090.63 and on the 31st of December of the same year, it was $51,916.00. At the time of the examination of the financial accounts on the day of July 15th, 1963, the debt had risen to $73,208.97;

6. Trisha Simich of Cleveland, asserts: that Bishop Dionisije charged the church congregation of Cleveland 150 dollars for the approval of plans, and 150 dollars travelling expenses at the time of the blessing of the corner-stone for the new church in Cleveland, even

though the traveling expenses from Libertyville to Cleveland and back do not exceed $30.00;

7. Sam Vignjevich, former president of the church congregation of St. George in Pittsburgh, stated: that Bishop Dionisije requested to be paid travelling expenses in the amount of $100.00 for coming to Pittsburgh for the ordination of Milan Savich, a priest. Just before the Divine Liturgy itself, he requested $150.00 in cash, not by check, threatened not to enter the church until he was paid this sum, and it was then paid him;

8. Archimandrite Firmilian Ocokoljich, presently the Bishop of the Middle-Western American Diocese, as former parish priest in New York, testified: that Bishop Dionisije charged $200.00 for the blessing of the iconostatas in New York, and $200.00 for the blessing of the church in Elizabeth, New Jersey, which parish has only 50 homes. A month later, he charged that same congregation $200.00 for the ordination of the priest, Ilija Dajkovich; and

9. Vladimir Milinkovich, priest of Indianapolis, asserts: that Bishop Dionisije charged him $200.00 for his wedding.

V.

EVIDENCE against Bishop Dionisije for the offense—c) Against the established order of the Church and for schism:

1. From the declaration of Bishop Dionisije issued under the title "Important Announcement." Bishop Dionisije indicated that he will separate himself from the mother, Serbian Orthodox Church. He later withdrew this declaration because the Priest's Association in America took an opposing stand;

2. From a circular of Bishop Dionisije dated May 25th, 1963, it is seen that Bishop Dionisije sent a declaration to the clergy and the people, stating that he does not recognize the decision of the Holy Episcopal Synod of the Serbian Orthodox Church No. 1664/Min. 188, of the 10th of May, 1963, with which criminal procedures had been instituted against him, and the suspension from the performance of priestly services, with a reduction in remunerations, was placed against him. Bishop Dionisije reiterated his refusal to recognize these decisions of the Holy Episcopal Synod in his Act No. 196, of the 3rd of June, 1963, which he directed to the Serbian Patriarch German, and in which he also wrote that he will not recognize the decision of the Holy Episcopal Council of the Serbian Orthodox Church under EC No. 20/Min. 77 of the 10th of May, 1963, concerning the division of the American-Canadian Diocese into three new dioceses: Eastern-American and Canadian, Middle-Western American and Western American, and the appointment of Administrators, until the decision of the Church National Assembly of the American-Canadian Diocese, and until all charges are presented to him for reply. Bishop Dionisije reiterated his disobedience of the decisions of the Holy Episcopal Council and Synod of the Serbian Orthodox Church at the meeting of the Diocesan Council—Plenum, June 6th, 1963. With his circular of June 28th, 1963, under the title "American-Canadian Serbian Triumvirate," Bishop Dionisije invited all the Serbian Orthodox Church Congregations throughout the world to place themselves under his protection, with this message: "I accept under the protection of this Diocese, all church congregations throughout the world, which do not wish to be subordinated to Belgrade." In another circular dated June 28th, 1963, beside requesting an investigation of his offenses, he

stated: that he cannot attend any hearings or discussion with the Investigating Committee of the Holy Episcopal Synod of the Serbian Orthodox Church, but that he will make use of the right to be in contact with it through correspondence. On June 29th, 1963, he ordered Abbot Simeon Gvozdanovich at Shadeland not to receive the Investigating Committee at the Monastery of Shadeland nor to permit them to enter the chapel. Aside from the fact that he informed the clergy and the people in his circular that he will not come into direct contact with the Investigating Committee, Bishop Dionisije, on July 5th, 1963, met with it, suggesting the meeting take place not in the residence, but in a public place. In the presence of the Investigating Committee, he reiterated in the record of minutes, his known statements that he will not obey the decisions of the Holy Episcopal Council and Synod of the Serbian Orthodox Church concerning the institution of criminal procedures against him, and concerning the division of the diocese; that he will reply to the Investigating Committee only on questions presented in writing, and that he stands behind everything in his circulars and statements made both before and after the decisions of the Council and Synod.

He is translating into deeds all his statements, given in the circulars to the clergy and the people in his Act directed to the Serbian Patriarch and in the minutes of the Investigating Committee; that he will not obey the decisions of his highest superior Church authorities—the Holy Episcopal Council and Synod of the Serbian Orthodox Church. Even though he has been relieved of his duties as diocesan bishop, Bishop Dionisije continues to work, and with his decision of July 7th, 1963, he relieves his Episcopal Surrogate, Archimandrite Firmilian Ocokoljich of his duties. On July 12th of the same year, he relieves the

Viear General, Protopriest Dushan Klipa, parish priest of Clairton, of his duties. He receives Dushan Petrovich, priest and cleric of the Slavonian Diocese, without a canonical release and appoints him parish priest of the church of St. Nicholas in Indianapolis. He announces open competition for filling the vacancy of the parish in St. Louis. He invites the clergy and church congregations not to obey the orders of the administrators: Archimandrite Firmilian, Archimandrite Gregory, and Protopriest Stevan Lastavica, even though they were appointed by the Holy Episcopal Synod. He invites them to turn to him and to his organs for all their needs. Also, even though he is under suspension from performance of priestly ceremonies, Bishop Dionisije serves and performs the Church ceremonies. On St. Elijah's day, August 2nd, 1963, he serves matins in the Monastery of St. Sava in Libertyville, and later he blesses the cornerstone for a new temple in Sudbury, Canada.

3. From the joint report of Bishops Stefan, Firmilian and Gregory, of August 26th, 1963, and from the resolution of the so-called X Church National Council of August 8th, 1963, in Libertyville, it is seen that Bishop Dionisije presided over this Council and participated in bringing forth the Council's resolution not to recognize the decisions of the Holy Episcopal Council and Synod of the Serbian Orthodox Church, concerning: the division of the American-Canadian Diocese into three new dioceses; his relief of duty as the diocesan bishop; the institution of procedures in the matter of his offenses; his suspension from the performance of priestly ceremonies, and the election and appointment of three new bishops. He requested that these decisions be withdrawn.

VI.

From the joint report of Bishops Stefan, Firmilian, and Gregory of November 25th, 1963, No. 197, and from the decision of the so-called X Church National Council held in Libertyville on November 13th, 1963, it is confirmed that Bishop Dionisije presides over the continuation of the work of this Council on the 12th, 13th, and 14th of November, 1963. It is also confirmed that he participates in bringing forth decisions by which the Serbian Orthodox Diocese for the United States of America and Canada is proclaimed completely autonomous; that it will not as such, in the future accept any orders or decisions of the Patriarch, the Holy Episcopal Council and Synod of the Serbian Orthodox Church, up until the time they will be in a position to freely work and freely bring forth decisions, for they do this now under the pressure of the regime which is now in power in Yugoslavia. When this government ceases to exist the same relations between this diocese and the Serbian Orthodox Patriarchate which existed before the Second World War will be reinstituted. The Diocesan Council and the Ecclesiastical Court are further empowered by a decision to seek the cooperation or help of any canonical Orthodox Church in the free world, in case of legal necessity, and with the purpose of ensuring the continuity of the legality of the Church and the unity of this Diocese, insofar as the heirarchical organization, that is to say, the reorganization of this Diocese will not have been by then carried out.

2. From the report of the Bishop of Eastern America and Canada, Stefan, No. 215, dated December 9th, 1963, and from the circular of Bishop Dionisije of the 8th of December, 1963, it is confirmed that the so-called X Church National Council of Libertyville, on November 14th, 1963, elected Archimandrite Irinej Kovacevich bishop, and this

his consecration was performed December 7th, 1963, by bishops of the self-named Ukranian Orthodox Church, Gregory and Genadije, whose canonicity is not yet recognized by the Conference of Orthodox Churches in America.

3. Bishop Dionisije, having earlier received the indictment of the court prosecutor, dated October 16th, 1963, he returned it to the Holy Episcopal Synod of the Serbian Orthodox Church, along with its decision syn. No. 3676 of the 10th of December, 1963. He returned it by his Act of the 25th of January, 1964, with the statement that he is returning it because the Holy Episcopal Synod did not grant him a six months time limit to write his answer to the indictment and the copies of the material evidence. By this action of his, Bishop Dionisije refused to continue further in the criminal case being held against him.

VII.

The offenses of Bishop Dionisije Milivojevich of Libertyville, U.S.A., are completely proven by the evidence presented in the documentation of this Judgment: that he conducted himself contrary to Church regulations, and in a manner unbecoming his rank and position; that he did not execute his duties with care; that he worked against the ordinances of his superior Church authorities; that he damaged the established order of the Church, separated himself from the Church and fell into schism. Therefore, the Holy Episcopal Council of the Serbian Orthodox Church, as an ecclesiastical organ, on the basis of Clause 6 of the Second Ecumenical Council; Clauses 14 and 15 of the Antiochian Council; Clause 12 of the Council of Carthage; Articles 7 and 69, Point 27/B, and Article 214, Points 1, 2, 3, and 6 of the Constitution of the Serbian Orthodox Church, and Paragraphs 1, 2, 9, and 12, Constitution of the Serbian Orthodox Diocese of the United

States of American and Canada, punished him with the punishment of Article 216, Points 8 and 10 of the Constitution of the Serbian Orthodox Church—divestiture of episcopal and monastic rank.

VIII. . . .

The Court Prosecutor of the Serbian Orthodox Church, during the adjudication of the offenses of Bishop Dionisije, requested that the Holy Episcopal Council permit him to extend his indictment of the 16th of October, 1963, to include the offenses of Bishop Dionisije committed on the 13th and 14th of November, 1963, at the so-called X Church National Council in Libertyville. These offenses came with the creation and declaration of the Serbian Orthodox Diocese of the United States of America as a diocese completely autonomous and separate from the Serbian Orthodox Church. They arise also from his granting consent to create a non-canonical heirarchy outside the jurisdiction of the Serbian Orthodox Church, in this way creating a schism in Her, through the non-canonical election of Archimandrite Irineji Kovacevich as bishop at an illegal Church National Council, and later through his consecration.

The Holy Episcopal Council of the Serbian Orthodox Church accepted this request of the Court Prosecutor and punished Bishop Dionisije for these offenses.

The supplementary portion of the indictment was not sent to the accused Bishop Dionisije, because with his Act of the 25th of January, 1964, he returned the indictment of the Court Prosecutor dated the 16th day of October, refused to answer it and refused to participate in further proceedings concerning his offenses. He did this because the Holy Episcopal Synod by its decision No. 3676/Min. 647, of the 10th of December, 1963, was unable

to extend the time limit for writing an answer to the indictment to six months. According to the canons (Regulation 19 of the Council of Carthage), the time limit in an ordinary case is one month, and in a special case, two months. According to the Regulations and Procedures for the Ecclesiastical Courts of the Serbian Orthodox Church (Article 70), the time limit is only 14 days. The indicted Bishop Dionisije benefited from a two month time limit and did not answer the indictment, that is to say, he answered that he will not answer.

IX.

The Holy Episcopal Synod of the Serbian Orthodox Church, by its Act of the 25th of February, 1964, Syn. No. 357/Min. 78, informed the Holy Episcopal Council of the Serbian Orthodox Church, that regarding the confirmed gravity of the offenses committed by Bishop Dionisije Milivojevich, it considers itself as having exhausted its authority as provided in Article 70, Point 35, of the Constitution of the Serbian Orthodox Church. Therefore, it brings the entire criminal case of the indicted Bishop Dionisije before the Holy Episcopal Council with the recommendation that the Holy Episcopal Council bring forth a final judgment on it on the basis of Clause 6 of the Second Ecumenical Council; Clauses 14 and 15 of the Council of Antioch; Clause 12 of the Council of Carthage; Articles 7 and 69, Point 27/B of the Constitution of the Serbian Orthodox Church. The procedure for judgment of a bishop is not sufficiently explained in our positive Church legislation, and this procedure is sufficiently expounded in the canons of the Orthodox Church cited above.

The Holy Episcopal Council accepted this recommendation of the Holy Episcopal Synod, and on the basis of Clause 6 of the Second Ecumenical Council; Clauses 14

and 15 of the Council of Antioch; Clause 12 of the Council of Carthage; and Articles 7 and 69, Point 27/B of the Constitution of the Serbian Orthodox Church, as the ecclesiastical organ, pronounced the final judgment concerning the offenses of Bishop Dionisije, as stated in the body of the judgment.

X.

Being that this judgment was pronounced unanimously by all the members of the Holy Episcopal Council of the Serbian Orthodox Church, therefore, according to the 15th Clause of the Council of Antioch, it is final, and there is no appeal.

From the meeting of the Holy Episcopal Council of the Serbian Orthodox Church, on the 15th of March, 1964, in Belgrade, EC No. 1/Min. 38.

Seal

President
Holy Episcopal Council
Serbian Patriarch
German

(List of Members omitted.)

DEFENDANTS' EXHIBIT QQ-1.

Indictment in the Subject of the Transgressions of the Priest Mileta Simonovich, Parish Priest, in Akron, Ohio, August 31, 1964.

THE CHURCH ECCLESIASTICAL COURT OF THE EASTERN AMERICAN AND CANADIAN DIOCESE

Clairton, Pa.

Indictment

In the Subject of the Transgressions of the Priest Mileta Simonovich Parish Priest in Akron, Ohio.

Plaintiff: The Very Reverend Miodrag Djurich
The Church Court Prosecutor of the
Eastern American and Canadian Diocese
Lackawanna, New York

Defendant: Reverend Mileta Simonovich
Temporary Pastor in Akron, Ohio

After completing preparatory procedures and collecting data and evidence in the criminal case against Reverend Mileta Simonovich, Temporary Priest at the Church of St. Dimitrious the Great Martyr in Akron, Ohio, I am honored to present to that Jurisdictional Ecclesiastical Court the following formal indictment.

The Reverend Mileta Simonovich is something over 40 years old and as an undergraduate seminarian he finished seminary in Eboly, Italy, where he graduated in 1947. He was ordained to the order of Deacon and then Priest in the month of October, 1956 in the St. Sava Monastery in Libertyville, Illinois, by the former and now defrocked Bishop Dionisije Milivojevich.

The accused Reverent Mileta Simonovich served in Butte, Montana, Fresno, California and now in Akron, Ohio.

#I. Transgressions Against the Teachings of the Church and Established Church Order.

From the first days of the schismatic activities of Dragoljub Milivojevich, the former Bishop Dionisije, the Reverend Mileta Simonovich took an obvious part in the schism, for which he has been placed under the Church Court with the suspension from performing priestly duties by Act E. # 190/963 dated March 5, 1964.

The accused Reverend Mileta Simonovich took an obvious part at the convention in Libertyville on August 8th and 9th of 1963, and that convention was organized by the defrocked Bishop Dionisije, Dragoljub Milivojevich, as a disturbance against the established order of the Church and the teachings of the Church, and Reverend Mileta Simonovich entered into certain committees of that disrupting convention.

Evidence: 1—An official list of participants in the schismatic convention in Libertyville on August 8th and 9th, 1963

On the 9th of September, 1963 at a meeting of the faithful in Akron, Ohio where the Very Reverend Emilijan Glocar, the Reverend Branko Skaljac, Mr. Sam Milanovich and many others were present, the Reverend Mileta Simonovich gave the following statement:

"Our Church today is under Communist influence and there exist secret letters from our Church leaders about whom our Bishops say that they are subservient to the Communists. Because of that we here in the free world should not invalidate any decisions of our Church because those decisions are brought under pressure of the Communists."

With this, his statement, the Reverend Mileta Simonovich transgressed paragraph 214 of the Constitution

of Serbian Orthodox Church, Section 1 and Section 6 as well as paragraph 15 of the Rules and Procedures for Ecclesiastical Courts.

Evidence: 2—The complaint of the members of the Church Congregation dated September 23, 1963 in Akron, Ohio.

The accused Reverend Mileta Simonovich on the 10th of November, 1963, served with the defrocked Bishop Dionisije, Dragoljub Milivojevich, and knew of Dionisije's defrocking.

Evidence: 3—Statement of the parishioners from Akron, Ohio dated November 11, 1963.

II. Criticizing the Laws and Ordinances of the Jurisdictional Authorities.

The accused Reverend Mileta Simonovich by many of his acts and statements, beginning from the first days of the creation of the schism of the former Bishop Dionisije and all until today, has offered many evidences of his rejection of obedience to his jurisdictional hierarch, His Grace The Right Reverend Bishop Stefan, and to the higher Church authorities.

Beginning with his first written warning E. #89 dated 1 October, 1963 (altogether three warnings were sent), and all up until today the above named never made an answer and his relationship to the legal Church authorities and organs was marked by his completely ignoring them.

On the invitation of the Church Court Prosecutor to come to a hearing he rejected the invitation. (he did not even open the registered letter)

Evidence: 4—Registered letter #118167 of March 19, 1964.

His Grace Right Reverend Bishop Stefan, Bishop of Eastern America and Canada by his decision E. =190/963 dated March, 1964, placed Reverend Mileta Simonovich under suspension from performing priestly ceremonies. The above named ignored this decision and performs priestly ceremonies further, and mentions the defrocked Bishop Dionisije.

Evidence: 5—Statements of witnesses.

III. Behavior Not Becoming to the Priestly Rank and Position.

The very fact that the accused Reverend Mileta Simonovich invited the dissatisfaction of his flock, for he openly aligned himself with the schism, sufficiently shows his unpriestly behavior.

On the basis of all which is presented above, in accordance with paragraph 219 of the Constitution of the Serbian Orthodox Church, Article 69 the Rules and Procedures for Church Court and Article 134 Section A.1 of the Constitution of the Serbian Orthodox Church and 53 of the Constitution of the Serbian Orthodox Diocese in the United States of America and Canada I present to that Court this written indictment against the accused Reverend Mileta Simonovich, Temporary Priest in Akron, Ohio, because of the Church transgressions he committed:

I. Transgressions Against the Faith and Teachings of the Church and the Established Church Order. (Article 214 Section A.1 Constitution of the Serbian Orthodox Church, Articles 9, 15, 17 and 26 Sections 1 and 30.10 Rules and Procedures for Church Courts.)

II. Discussion and Criticism of the Laws and Ordinances of the Jurisdictional Church Authorities and Their Procedures. (Article 214 Section A.6 Con-

stitution of the Serbian Orthodox Church.)

III. Behavior Which Is Unbecoming to the Priestly Rank and Position. (Article 214 Section A.2 the Constitution of the Serbian Orthodox Church.)

Because of the aforementioned listed Church transgressions of the accused Reverend Mileta Simonovich, Temporary Priest in Akron, Ohio I request that the Church Court of the Diocese of Eastern America and Canada punish the above named by the divestiture of the priestly rank on the basis of Article 216 Section A.9 of the Constitution of the Serbian Orthodox Church and Article 55 Section A.8 the Rules and Procedures for Church Courts.

(In the case of rude objections in the further course of the main procedure or of the main trial I request that this punishment be stronger.)

The accused Reverend Mileta Simonovich as the Temporary Priest in Akron, Ohio, belongs to the Diocese of Eastern America and Canada, therefore, the Church Court is jurisdictional for the decision on this criminal case in accordance with Article 64 Rules and Procedures for Church Courts and Article 53 Constitution of the Serbian Orthodox Diocese in North America and Canada.

I request that all the listed evidence in this indictment be brought forth in the main trial.

In Lackawanna, August 31, 1964.

Miodrag Djurich
Church Court Prosecutor
Eastern American and Canadian
Diocese.

DEFENDANTS' EXHIBIT VV-1.

Decision and Decree, December 1, 1964.

SERBIAN ORTHODOX CHURCH IN THE
UNITED STATES OF AMERICA AND CANADA
Diocese for the Eastern States of America & Canada
Clairton, Pa.

December 1, 1964

No: 412/964

To:

The Executive Board and Board of Control
St. Demetrius Church-School Congregation
Akron, Ohio

St. Demetrius Church Parishioners Committee for
the Unity of the Serbian Orthodox Church
Akron, Ohio

The Diocesan Council of the Eastern American and Canadian Diocese of the Serbian Orthodox Church in the United States of America and Canada, at its meeting of October 17, 1964, brought forth Act No. 359/964, containing the following

DECISION.

Based on the positive laws of the Serbian Orthodox Church all these Executive Boards and Boards of Control of Church-School Congregations which have aligned themselves against the unity of the Serbian Orthodox Church and have gone into schism with the former bishop, Mr. Dragoljub Milivojevich, and who do not abide by the decisions of the higher Church authorities, shall be relieved of all these honorary offices in their Church-School Congregations.

In all such cases, the administrations of these particular Church-School Congregations shall be turned over to a

special temporary trusteeship composed of these who shall be appointed and who have shown proof of their positive stand for unity with the Serbian Orthodox Church, and who are conscientious and decent persons; and also loyal sons of their Mother Club.

In all such cases, the Diocesan Executive Board shall apply and execute this Decisions.

The above Decision was read, formaly approved and adopted by the Council of the Serbian Orthodox Church in the United States of America and Canada at its meeting held November 26, 27 and 28, in Detroit, Michigan.

Persuant to the Diocesan Council's Decision, the Diocesan Executive Board of the Eastern American and Canadian Diocese, as directed makes the following:

DECREE.

1. The present Executive Board and Board of Control members, members of the St. Demetrius Church-School Congregation of Akron, Ohio, being in violation of the positive laws of the Serbian Orthodox Church, are relieved of their duties.

2. Considering all of the circumstances and the present existing conditions in your Church-School Congregation, William Popadich, Walter Rakich, Samuel Susnar, Ivan Ristich, Alex Stankov and Misha Savich, all Past Presidents of the St. Demetrius Church-School Congregation of Akron, Ohio, who are aware of the proper management and conducting of Church affairs, are hereby appointed and assigned as a Temporary Caretaker Board, and entrusted with the full management and control of the St. Demetrius Church-School Congregation of Akron, Ohio.

3. The present members of the Executive Board and Board of Control of the St. Demetrius Church-School

Congregation of Akron, Ohio, are hereby directed immediately to transfer all duties, management and control to the aforementioned temporary caretakers, who are to receive the same.

The temporary caretaker board shall have the full powers and duties of control and management of the St. Demetrius Church-School Congregation of Akron, Ohio, and are forthwith directed to have conducted an audit of all Church-School Congregation Properties, by a Certified Public Accountant and, to have forwarded, a copy of the same to the Diocesan Executive Board.

The Temporary Caretaker Board is further directed immediately to do all things and matter necessary, under the laws of the Serbian Orthodox Church to restore, as soon as possible, a peaceful and normal religious life, and, further, to continue to direct, manage, and control the affairs of the St. Demetrius Church-School Congregation of Akron, Ohio, according to the laws of the Serbian Orthodox Church and subject to further directions of said Diocese.

These decree is effective immediately upon receipt.

BISHOP STEFAN
President, Diocesan Executive Board
Eastern American and Canadian Diocese

SAM MILANOVICH
Vice-President,
Diocesan Executive Board

REV. MILAN MARKOVINA
Secretary, Diocesan
Executive Board

APPENDIX C.

CASES INVOLVING THE SAME CONTROVERSY AS ST. DEMETRIUS v. KELEMEN.

Ohio:

a. Akron—

Popadich v. Shatrich C/P No. 245,972.

State of Ohio ex rel. Pappas v. Shatrich, et al., C/A No. 5578.

b. Youngstown—

Dragelevich, et al. v. Rajsich, et al., C/P No. 175,596.

c. Lorain—

Ralich, et al. v. Vukelich, et al., C/P No. 68686 (Lorain Cty.) and C/A No. 1710.

d. Cleveland—

Jovanovich, et al. v. Simich, et al., C/P No. 790,246 (Cuyahoga Cty.); C/A No. 26957.

St. Sava v. Naperta, et al., C/P 795014 (Cuyahoga Cty.) C/A No. 27,250.

Illinois:

a. *Serbian Eastern Orthodox Diocese for U. S. A. and Canada, et al. v. Ocokoljich, et al.*, Circuit Ct. Case No. 63-1644, consolidated with Case No. 63-2312 (Lake Cty.)

Indiana:

a. *Merich v. Kragulac*, Stark County Circuit Court No. 63-315.

b. *Kragulac v. Tumbas*, Lake County Circuit Court No. C66-677.

c. *Pasalich, et al. v. Draskovich, et al., Elkhart Circuit* Court No. 32391.

Minnesota:

a. *Danich, et al. v. Andrich, et al.*, Dakota County First Judicial District (South St. Paul).

Pennsylvania

a. *Gvozdich v. Dudukovich*, C/P Cambria County, Pa. (Johnstown, Pa.).

New Jersey:

a. *The General Council of Cossacks v. Rev. Adam Burhin*, Superior Court, Chancery Division Cumberland Cty., Case No. C 200-63.

b. *Serbian Eastern Orthodox Congregation of St. George, et al. v. Serbian Eastern Congregation of St. George, et al.*, Superior Ct. of N. J., Union County, Docket C-2874-64 and C-3603-64.

Canada:

Mirkovich, et al., v. Bozanich, et al.—Ontario Supreme Court.

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E. ROBERT SEAVER, CLERK

In the Supreme Court of the United States

No. 347.

OCTOBER TERM, 1970.

VLADISLAV KELEMEN, *et al.*,
Petitioners,

v.

SERBIAN ORTHODOX CHURCH CONGREGATION OF ST. DEMETRIUS OF AKRON,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE OF OHIO.

BRIEF OF RESPONDENT IN OPPOSITION.

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In the Supreme Court of the United States

No. 347.

OCTOBER TERM, 1970.

VLADISLAV KELEMEN, *et al.*,

Petitioners,

v.

SERBIAN ORTHODOX CHURCH CONGREGATION OF ST. DEMETRIUS OF AKRON,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO.

BRIEF OF RESPONDENT IN OPPOSITION.

PRESENTATION OF THE FEDERAL QUESTION:

Petitioners quote one paragraph of the opinion of the Supreme Court of Ohio on page 7 of the Petition itself, and then assert that this paragraph resulted in a denial of "our constitutional rights under Amendments I and XIV." Petitioners are not more specific.

The paragraph found to be offensive amounts only to a statement that the Court of Appeals, or any Court subsequently dealing with the dispute which precipitated this litigation, must limit itself to secular documents. Respondents believe that not only is the position of the Supreme Court of Ohio eminently correct, but also that it is 180 degrees removed from a denial of constitu-

tional rights; it reflects rather a profound understanding that the First Amendment prohibits Courts from interfering with the exercise of religion. Accordingly, Respondents urge to this Court that there is no Federal question presented; and suggests that the history of the litigation here involved justifies the only question now extant being phrased in this fashion: "When the Supreme Court of the United States remands a lawsuit to the highest court of a state for consideration in light of a particular pronouncement of the United States Supreme Court, and the State Supreme Court, pursuant to such remand, issues a directory opinion and mandate to its own subservient court with instructions as to how that lower court is to proceed consistent with the pronouncement of the United States Supreme Court, but does not make any substantive ruling concerning the issues central to the litigation, may a party successfully petition this court for Writ of Certiorari in anticipation of losing because of certain limitations embodied in the opinion of the highest state court when it interpreted the opinion of the Supreme Court."

COUNTER-STATEMENT OF THE CASE.

Rather than accept Petitioners' Statement of the Case, seemingly based on what they wished the Record had contained, Respondent submits the following more limited version, identified by specific page reference to Petitioners' Appendix.

Respondents (Plaintiff initially) instituted a Common-Law action asserting a property right in their name (Appendix page 13); Petitioners (Defendant initially) Cross-Petitioned seeking a judicial declaration as to whether Respondents or Petitioners were true Church members (Appendix page 16 and Appendix page 50, numbered paragraph 1).

The trial court found that Respondents, by their conduct, had created a schism (Appendix page 46) (NB: Not that they had been *declared* schismatic); and ordered that Respondents surrender the Church property and their positions of trust (Appendix page 47).

Appeal was taken and, consistent with Ohio procedure, the result was a trial *de novo* on the basis of exhibits and transcript. The Court of Appeals ruled that the unilateral attempt of Yugoslavia to divide the American Diocese into three had been beyond the powers of Belgrade (Appendix page 64); it found also as a fact that Respondents claimed "ecclesiastical autonomy and hence are schismatic"; and then ordered Respondents to deliver to Petitioners all the Church property because, as schismatics, Respondents had no membership rights (Appendix pages 65-66). No such determination was made with respect to Petitioners because of their error in following the unlawfully created partial Diocese. (Parenthetically, in spite of the Court order made in 1967 in this litigation that this Diocese was unlawful, Petitioners, on page 5 of their Peti-

tion herein, again assert that there are three Dioceses, not one.)

Appeal was taken to the Supreme Court of Ohio by Respondents herein where *inter alia* it was claimed that when the Court of Appeals had declared us to be schismatic and denied us our right to worship, it had overstepped the boundaries of the First Amendment and specifically gone beyond the "broad judicial abstention from religious disputes" which was the heart of *Watson vs. Jones*, 13 Wall. 679.

That appeal was denied without opinion, as was Respondents' Motion for rehearing and Respondents herein then became Petitioners to this Court in Case No. 1427 in the October term of 1967, in which matter this Court, on February 24, 1969, granted certiorari, vacated judgment and remanded, for consideration in light of *Mary Blue Hull*, 393 U.S. 440.

The Supreme Court of Ohio after hearing, then remanded this litigation to be adjudicated "by reference to the provisions of the Code of Regulations and By-Laws of the corporation not for profit, the corporate laws of the state, and any other secular instruments not requiring the resolution of religious tenets or doctrine" (Appendix page 76).

Petitioners include in their Statement of Case the following: "The highest ecclesiastical body made a determination of schism" (Petition page 5). The document actually referred to is found on page 78 of the Appendix and is twenty (20) printed pages long. It is evident on its face that it is a letter from the three Bishops who were then (1964) acting as head of the three Dioceses, which have no lawful existence so far as this case is concerned. It is in large part a discussion of certain actions taken by Belgrade with respect to Bishop Dionisije. It concludes

on page 96 with the prayer that those reading the document "remain in the Church of their ancestors." Respondents cannot reconcile this exhortation with Petitioners' statement that the 20 pages somehow amount to a determination of schism.

The Supreme Court of Ohio, when it considered this case on remand, had that same document in front of them (Record—Ohio Supreme Court Case No. 41380 at page 298) and in the opinion, review of which is now sought, stated this (Appendix page 75): "The Record does *not* illustrate that Plaintiff has been ecclesiastically adjudicated to be outside the church doctrine because of the commission of certain acts."

The concluding paragraph of Petitioners' Statement of Facts is that the Supreme Court of Ohio has "made law with respect to the establishment of religion by allowing a majority of an hierarchical body to determine the religion to be practiced in the Church property."

Petitioners' Appendix, of course, contains the opinion of the Supreme Court of Ohio in full (pages 67-76). The initial part of that opinion is a discussion of *Mary Blue Hull* and only pages 72 to 76 need be examined to learn that the Supreme Court did not do what Petitioners claim.

Excerpts of that opinion:

> (1) "The findings (relative to organization relationship powers and duties of the Mother Church) of the Court of Appeals are unnecessary and immaterial to a *neutral* law inquiry utilizing principles of law developed for use in *all* property disputes." (Appendix page 73.)
>
> (2) "The Court of Appeals found that the members of plaintiff association have performed schismatic acts amounting to a withdrawal from the general church. The essence of this finding must lie in a judicial determination that plaintiff has acted contra

to the doctrine and tenets of the church * * * the viability of the principle of the *Hull Memorial* case commands the same judicial abstinence." (Appendix page 73.)

(3) "A review of Ohio law does not reveal recognition of an implied-trust theory of real property * * * Even if it were to have existed, civil judicial cognizance of it is deemed unconstitutional if it necessitates a court deciding church doctrine." (Appendix page 74.)

(4) "* * * we are not confronted with the problem of whether we can constitutionally order the enforcement of a determination made by an ecclesiastical tribunal." (Appendix page 75.)

Respondents believe that rather than making law, the opinion of the Supreme Court of Ohio radiates a total understanding and application of *Mary Blue Hull* and the partial statement made by Justice Brennan (89 S. Ct. 605) that "The logic of this language leaves the civil courts no role in determining ecclesiastical questions in the process of resolving property disputes."

Respondents recognize that much of the foregoing is perhaps beyond what ought to be contained in a Statement of Case and is, in fact, argument. However, Respondents feel compelled to proceed in this fashion in order that those reading this case will be able to easily match up Respondents' objections with that part of the Petition which precipitated the objections.

REASONS FOR NOT GRANTING THE WRIT.

1. Such public interest as there now is in the powers and limitations of civil courts is only concern for the choice from among the methods permitted to the various state court systems for resolution of church disputes consistent with this Court's previous pronouncements in *Mary Blue Hull* and *Eldership*.

Petitioners' listing of Serbian church cases at Appendix, page 128, is totally accurate and certainly illustrates that the dispute central to this issue is a violent one. It would, of course, be possible to compile a list even longer of litigation currently involving the *Four Seasons Nursing Home* or perhaps claims against *Penn-Central*, but Respondents do not believe that this would necessarily justify this Court in entertaining a particular one of such disputes wherein a certiorari was sought.

On page 8 the statement is made that the New Jersey Court which made a decision ultimately resulting in a denial of certiorari (397 U.S. 961) "* * * had the benefit of the *Hull* and *Eldership* decisions * * *" The Petition for writ of certiorari in that case (October term 1969 No. 1012) was an attempt to appeal from an order of the Supreme Court of the State of New Jersey on September 30, 1969. The *Eldership* case was decided on January 19, 1970; and, accordingly, it cannot be true that the New Jersey Court considered the *Eldership* decision.

Perhaps Petitioners are attempting, by implication, to suggest that the Supreme Court of Ohio did not have the benefit of *Eldership*. On February 24, 1970, by letter to the Clerk of the Supreme Court of Ohio, counsel for Petitioners themselves specifically called to the attention of the Supreme Court of Ohio the *Eldership* case. It is not apparent in the language of Ohio's opinion that *Eldership* was considered, but the opinion was dated March 4, 1970,

more than a week subsequent to the letter referred to above; and, obviously, the Supreme Court of Ohio had the opportunity to examine *Eldership* had it wished to do so.

In any case, the most that Respondents can understand from reading the entirety of Part 1 under "Reasons for Granting Writ" is that Petitioners are complaining that certain Serbian church-goers in New Jersey occupying a position described by Petitioners as "identical" have control of church property; and Petitioners, in Ohio, do not. Petitioners are suggesting that "uniform administration of justice" would require that either Petitioners and their allies both be in church or out. Respondents suggests that what Petitioners are really asking the Court to do herein is reverse *Erie vs. Tompkins*, at least with respect to religious property, and begin the ardous task of laying down Federal Common Law.

At any rate, it is not true that Petitioners have been denied their property rights. All the Supreme Court of Ohio did was direct its Lower Courts to apply "neutral principles of law." Respondents suggest that Petitioners are, at best, premature since it is theoretically possible that the application of neutral principles of law by Ohio's Lower Courts could result in their attaining the property rights they are here contending for.

2. The decision of the Supreme Court of Ohio is entirely consistent with the decision of this Court in interpreting Amendments I and XIV to the Constitution of the United States.

Respondent believes that the following sentence found on page 11 of Petitioners' printed argument is the essence of their position that Ohio's decision violates Amendments I and XIV of the Constitution of the United States:

> "Allowing a state court to rule that a majority of a connectional church may divest or divert property dedicated to the use of such church constitutes the establishment of religion contrary to the First Amendment and amounts to taking property rights without due process of law in contravention of the Fourteenth Amendment."

Again Respondent can only suggest that the state court has made no such rule; it has simply directed its lower courts to apply neutral principles of law and then, according to such neutral principles of law, make a determination as to who is entitled to the control of the church property.

Elsewhere (Argument, page 10) it is stated that "there are no special statutes in Ohio relating to a non-profit religious corporation holding title to property dedicated to a hierarchical church body." Respondent's examination of the Revised Code of the State of Ohio has revealed Chapter 1715 entitled "Religious and Benevolent Organizations." It is true that in that chapter there is no special mention of "hierarchical church bodies"; it is equally true that much of that chapter is concerned with the "holding of title to property by non-profit religious corporations."

Specifically, Revised Code 1715.17 reads in its entirety as follows:

> "Property conveyed in trust for the use of a religious society, church, or association, whether incorporated or not, shall be held by the trustees and their successors, appointed as provided in the instrument creating the trust or in case no provision for successor trustees is made in such instrument, then by such successor trustees as are appointed by a competent court. No person shall be elected or appointed by such society, church, or association to act as trustee to the exclusion of any trustee appointed as provided in this section."

On pages 10 and 11 of the Petitioners' argument, claim is made that the Supreme Court of Ohio "in not adopting the formal title approach * * * erred * * * when it ordered the Court of Appeals to make its decision solely under this doctrine, the result of which will place the church property in the hands of the schismatics, who now constitute a majority of the members of the corporation." The Supreme Court of Ohio in 1834 in the case of *Keyser vs. Stansifer*, 6 O. 634, made this pronouncement:

> "Where a religious society purchase land, and the title vests in them in fee, as a corporation, the majority of the society have a right to control its use and occupation, of which they cannot be deprived by any supposed error of doctrine."

Petitioners have conceded that Respondents (termed schismatics) "constitute a majority." In the quotation from this argument found next above, they are objecting to a result which is consistent with Ohio's position since 1834. Additionally, they are suggesting to this court that the three methods of resolution of religious disputes set forth in the concurring opinion of Justices Marshall, Douglass and Brennan in the *Eldership* case have been misunderstood by the Supreme Court of Ohio and that the "formal title" approach is being misapplied in this case. Petitioners are contending that only the *Watson* rule can be

applied in Ohio, in this litigation at least: this is not Respondents' understanding of the position announced by *Mary Blue Hull* and *Eldership*.

In attempting to demonstrate what they believe should have happened, Petitioners direct the court's attention to Exhibits Q1, VV1, QQ1 and DDD1; and assert that those documents demonstrate actions taken in accordance with proper ecclesiastical procedure, which actions should have been enforced by civil courts, resulting in control of the church property being delivered to Petitioners.

The Court will, of course, make its own examination of those documents. However, in short, they are:

1. Q1—a 20-page document concerning the alleged offenses of and punishment of Bishop Dionisije. This document originated in Belgrade in 1964 and nowhere makes mention of individual church-goers.
2. QQ1—a document originating in 1964 in the offices of one of the dioceses having no lawful existence so far as the record of this litigation discloses (numbered paragraph 5, Appendix, page 64), which document is only an accusation of a priest serving in Akron in 1964 and nowhere indicates that the accusation was ever acted upon. In any case, this document makes no mention of individual church-goers in Akron, Ohio.
3. VV1—This is a document emanating in the headquarters of the non-existent diocese, which purports to direct the executive board of the church in Akron to relinquish its duties to named individuals purportedly appointed as caretakers by the Bishop of the non-existent diocese. This document, if it had emanated from a body with any status, is the sort of document which might well be enforced by a civil court in order to preserve peace. However, Petitioners have conceded in their argument that Respondents are the majority; it has been Ohio's law for more than 130 years, as

set forth above, that a majority may not be divested of control. Even without this, VV1 could be used against Respondents only in the application of an implied trust theory, and the Supreme Court of Ohio has stated in the opinion, review of which is here sought, that Ohio does not recognize the implied trust theory.

4. DDD1—again a document emanating from a nonexisting diocese; again a document largely concerned with the supposed transgressions of Bishop Dionisije; again a document containing nowhere any finding of schism or decree of excommunication or similar church pronouncement.

Because so much of the contents of the documents referred to above has to do directly with Bishop Dionisije and because the status of Dionisije is inextricably wound together with the question of the division of the diocese, Respondents inform the Court that only this summer, 1970, was the trial in Illinois concluded (after having consumed 120 plus days) in which Dionisije himself is now being afforded a chance in a civil court consistent with the rule of *Gonzales* (280 U.S. 1) to test those decisions made with respect to him for purposes of determining whether or not those decisions are tainted with "fraud, collusion, or arbitrariness." Only Dionisije has standing to directly attack those decisions; no pronouncement has yet been made resulting from his direct attack; and it is possible that the courts of Illinois will ultimately find that Dionisije has not been punished, removed or defrocked by Belgrade in accordance with Belgrade's own rules. Because of this possibility, it seems senseless for this Court to entertain the Petition for Writ and make an order with respect to a very small part of the Serbian Church dispute in this country, which order necessarily would have to be concerned with the status of Dionisije, not a party to this litigation, and a man whose status has not yet been resolved.

CONCLUSION.

Respondents urge the Court to dismiss the Petition for a Writ of Certiorari. In support of that request, we suggest that the Supreme Court of Ohio has only directed its lower courts to apply neutral principles of law exactly as directed by *Mary Blue Hull* and subsequently amplified by the concurring opinion in *Eldership*.

Respondents believe Petitioners to be in error when they state that the Supreme Court has deprived them of property without due process; it has simply instructed its lower courts to follow due process by applying neutral principles.

Neither has the Supreme Court of Ohio established religion. Obviously, in any litigation between contending factions in a church, there must be a determination made as to whom is a winner or a loser; if that determination is made only by the application of neutral principles of law as ordered by the Supreme Court of Ohio, that determination is not such "establishment of religion" as is proscribed by the First Amendment, although the result necessarily will be that one group is in church and the other group out.

Respondents do not believe that there has been a federal question presented by the latest developments in the litigation; Respondents urge the Court to dismiss the Petition and to allow this litigation to proceed in Ohio courts with Ohio applying its own principles of law.

Respectfully submitted,

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Counsel for Respondents.